



# U.S. Military Stop Loss Program: Key Questions and Answers

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## Summary

Stop Loss is a frequently misunderstood DOD force management program that retains servicemembers beyond their contractually agreed-to separation date. Because of the involuntary nature of this extension, some critics have referred to the program as a “backdoor draft” or “involuntary servitude”.

Stop Loss was initially used in the 1990-91 Gulf War and later in Bosnia and the Kosovo Air Campaign. All of the Services used Stop Loss at the beginning of Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) but only the Army has consistently employed some form of Stop Loss over the past five years. Today, there are over 12,000 soldiers in the active Army, Army Reserve and Army National Guard who remain on active duty beyond their scheduled separation date as a result of Stop Loss. While many observers tend to empathize with those in Stop Loss status, others assert that every servicemember who has enlisted or reenlisted over the past several years has been made aware of the program.

The authority for Stop Loss has existed since 1984 (Section 12305, Title 10) and enables the President to suspend the laws relating to promotion, retirement and separation during periods of national emergency or a Presidential call-up of the reserve components. Minor changes to the Stop Loss program were enacted in 2002 and 2006 but a more significant change was directed by P.L. 110-329, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 . This legislation established and temporarily funded a new special pay, up to a maximum of \$500 per month for all servicemembers extended by Stop Loss during FY2009. DOD’s implementing guidance for this special pay was announced on March 18, 2009. Soldiers are to begin receiving the special pay in their April checks and those eligible for retroactive payments are to receive these in lump sum by June, 2009. Servicemembers who have separated but who were in Stop Loss status between October 1, 2008 and April 1, 2009 are to automatically receive lump sum payments and these should also be received by June, 2009.

In January, 2007 the newly appointed Secretary of Defense Gates directed the Services to minimize the use of Stop Loss. The Army has consistently argued that Stop Loss is necessary to ensure that only trained and ready units are deployed to Iraq and Afghanistan. However, Secretary of Defense Gates recently announced the phased suspension of the Stop Loss program. The Army’s active component program is to end on January 1, 2010 while the Army Reserve and Army National Guard programs are to end in August and September, 2009, respectively. While the Services will retain the legal authority for Stop Loss, the Secretary of Defense decision will phase out the regular use of Stop Loss.

The FY2009 Defense Supplemental, P.L. 111-32, expanded the original special pay program by making it retroactive to September 11, 2001 for all former and retired servicemembers who had served in Stop Loss status since that time. The amount of the special pay remains at \$500 per month and there is a one-year window for the approximately 185,000 eligible individuals to file a claim for the special pay. The program terminates after one year.

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## Overview

Stop Loss is a frequently misunderstood DOD force management program that retains servicemembers beyond their contractually agreed-to separation date. Because of the involuntary nature of this extension on active duty, some critics have referred to the program as a “backdoor draft” or “involuntary servitude”.

Stop Loss was initially used in the 1990-91 Gulf War and later in Bosnia and the Kosovo Air Campaign. All of the Services used Stop Loss at the beginning of Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF)<sup>1</sup> but only the Army has consistently employed some form of Stop Loss over the past five years. Today, there are over 12,000 soldiers in the active Army, Army Reserve and Army National Guard who remain on active duty beyond their scheduled separation date as a result of Stop Loss. While many observers tend to empathize with those in Stop Loss status, others assert that every servicemember who has enlisted or reenlisted over the past several years has been made aware of the program.

The authority for Stop Loss has existed since 1984 (Section 12305, Title 10) and enables the President to suspend the laws relating to promotion, retirement and separation during periods of national emergency or a Presidential call-up of the reserve components. Minor changes to the Stop Loss program were enacted in 2002 and 2006. A more significant change was directed by P.L. 110-329, the FY2009 continuing appropriations act which established and temporarily funded a new special pay, up to a maximum of \$500 per month for all soldiers extended by Stop Loss during FY2009. DOD’s implementing guidance for this special pay is being developed, but the plan must first be submitted to the House and Senate Committees on Appropriations for approval. Details of this plan are not yet available.

In January, 2007 the newly appointed Secretary of Defense directed the Services to minimize the use of Stop Loss. The Army has consistently argued that Stop Loss is necessary to ensure that only trained and ready units are deployed to Iraq and Afghanistan. Recently, the Secretary of Defense conceded that the Army will need to continue using Stop Loss, probably through 2009<sup>2</sup> or longer.

## What Is Stop Loss?

Stop Loss is a force management program that involuntarily extends or retains active duty enlisted servicemembers beyond their established separation date. In the case of reserve component personnel called to active duty in support of OIF or OEF, Stop Loss involuntarily continues these members on active duty throughout their scheduled mobilization. Officers, on the other hand, do not have established separation dates and are generally able to serve for indefinite

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<sup>1</sup> Operation Enduring Freedom includes ongoing operations in Afghanistan, operations against terrorists in other countries, and training assistance to foreign militaries which are conducting operations against terrorists. Operation Iraqi Freedom includes both the invasion of Iraq and the subsequent counterinsurgency and rebuilding operations.

<sup>2</sup> Comments by Secretary of Defense Gates at a December 2, 2008 Pentagon news conference as reported by Military Times, “*Sec Def: Stop Loss to Remain Through 2009*,” by William H. McMichael, December 15, 2008.

periods. As a result, Stop Loss only applies to officers who have an approved retirement or resignation, which can then be denied or postponed until completion of the deployment.

There are two variations of Stop Loss: Skill-based and Unit-based Stop Loss. Skill-based Stop Loss retains selected personnel with critical skills. For example, in the early stages of OIF, Skill-based Stop Loss was employed to retain special operations and aviation personnel that were determined to be critical to military operations. Unit-based Stop Loss, on the other hand, is used to maintain unit strength, enhance unit integrity and maintain cohesion for units deploying to OIF/OEF by retaining those who might otherwise separate before, during or immediately after the deployment. As a general rule, if a servicemember is assigned to a unit that is alerted to deploy and his or her term of service will end during the deployment or 90 days prior to the deployment, their active duty period will be involuntarily extended to a point in time up to 90 days after the deployment ends.

A complementary program frequently associated with Stop Loss is Stop Movement. Stop Movement precludes the loss of unit personnel due to reassignment orders. Under Stop Movement, these orders will be rescinded and the individual will remain in the unit through the deployment cycle. While Stop Movement originally applied to all assigned personnel in a deploying unit, exceptions have emerged over the past several years. For example, Army soldiers being reassigned to Drill Sergeant or Recruiter duty, personnel selected for schools such as Officer Candidate School (OCS), Special Operations accessions courses and Army Medical Department schools are exempt from Stop Movement.

Since the beginning of OEF/OIF, the Services have used various combinations of unit and skill based Stop Loss and Stop Movement to address personnel shortfalls and to sustain the personnel readiness of deploying units.

## **What Is the Military Obligation for Servicemembers?**

Individuals enlisting in the armed forces, active and reserve component<sup>3</sup>, are contractually obligated to an eight-year service requirement called the Military Service Obligation (MSO). This obligation is stipulated on their enlistment contract. Those enlisting for active duty for the first time will generally commit to a two to six year active duty obligation. Following separation from active duty, the remainder of the MSO may be served in the Selected Reserve<sup>4</sup> or Individual Ready Reserve (IRR)<sup>5</sup>.

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<sup>3</sup> The term “reserve component” refers to the seven individual reserve components of the armed forces: the Army and Air National Guard, the Army Reserve, the Navy Reserve, the Marine Corps Reserve, the Air Force Reserve and the Coast Guard Reserve.

<sup>4</sup> Also frequently referred to as “drilling reservists,” members of the Selected Reserve are assigned to units and generally perform one weekend of training each month (the weekend “drill”) and two weeks of training each year (also know as “annual training”). Additional information on Reserve Component personnel matters can be found in CRS Report RL30802, *Reserve Component Personnel Issues: Questions and Answers*, by Lawrence Kapp.

<sup>5</sup> The IRR is a manpower pool of trained military personnel who have no unit affiliation and few, if any, military requirements. They can be involuntarily ordered to active duty under a Presidential Reserve Call Up, a Partial Mobilization, or a Full Mobilization.

For those directly joining the Reserve Component, a variety of options are available but all generally include a specified period of active Guard or Reserve duty in the Selected Reserve followed by a period in the IRR until completion of the MSO. Reserve component personnel, to include those in the IRR, are subject to a call to active duty under statutory authority.

Servicemembers who reenlist or extend beyond their initial or subsequent enlistment will also have a separation date. Similar to the initial enlistment, the reenlistment period generally ranges from two to six years. Those who decide to separate rather than reenlist are required to sign a declination statement confirming their intent but may still be retained by Stop Loss.

Officer personnel also have an eight-year Military Service Obligation and generally have an active duty service obligation of three to five years depending on their source of commission. They may voluntarily remain in their military component as long as they meet promotion requirements. Officers deciding to separate are required to serve the remainder of their MSO in the Selected Reserve or IRR. While officers do not have a firm separation date they are subject to Stop Loss if a voluntary resignation or retirement application has been submitted.

## **What Is the Authority for Stop Loss?**

Stop Loss is not specifically mentioned in law but is derived from 10 U.S.C. 12305 which states, in part:

“...during any period members of a reserve component are serving on active duty...the President may suspend any provision of law relating to the promotion, retirement, or separation applicable to any member of the armed forces who the President determines is essential to the national security of the United States.”

Section 12305 was added to Title 10 by the Department of Defense Authorization Act of 1984.<sup>6</sup> The legislative history of this section reveals that Congress, following the Vietnam War and the military's transition to a volunteer force, was concerned about the effectiveness of the President's call-up authority in the event of war or national emergency. To be able to respond to a crisis or to present a credible deterrent, a provision was believed necessary that would prevent the loss of both regular and reserve personnel who became eligible to separate or retire during a crisis. Therefore, the broad authority of this provision allows the President to extend the enlistment or appointment of essential personnel serving on active duty, reserve personnel who have been called to active duty, and non-mobilized reserve component personnel, if necessary.

By Executive Order 12728,<sup>7</sup> President George H. W. Bush, in 1990, delegated his authority under Section 12305 to the Secretary of Defense. This delegation authorized the Secretary to suspend the laws regarding promotion, retirement and separation and to further delegate this authority to subordinates appointed by the President. This delegation remains in effect.

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<sup>6</sup> Section 1021, P.L. 98-94, September 24, 1983.

<sup>7</sup> Executive Order 12728, *Delegating the President's Authority to Suspend and Provisions of Law Relating to Promotion, Retirement, or Separation of Members of the Armed Forces*, August 22, 1990.

In response to the attacks of September 11, 2001, President George W. Bush proclaimed a national emergency on September 14, 2001<sup>8</sup> and issued Executive Order 13223<sup>9</sup> to order the Ready Reserve to active duty for not more than 24 consecutive months. This proclamation remains in effect today. With the reserves ordered to active duty and the proclamation of a national emergency, the Secretary of Defense could approve implementation of necessary programs such as Stop Loss.

On November 9, 2001, the Secretary of Defense further delegated his authority under Section 12305 to the Service Secretaries. There is currently no Department of Defense (DOD) policy guidance such as an Instruction or Directive that addresses the Stop Loss program.

Over the past few years, several lawsuits have challenged the legality of the Stop Loss program. However, the courts have consistently held that Stop Loss is a valid exercise of Presidential power that is authorized by 10 U.S.C. 12305, that it comports with the requirements of the Fifth Amendment's Due Process clause, and that it is a proper delegation of Congressional power.<sup>10</sup>

## How Has Stop Loss Been Used By the Services?

Stop Loss was first used during the 1990-1991 Gulf War where it was initially applied to all deployed personnel and later to selected individuals with critical skills. It was also used at the beginning of the Bosnia deployment and during the Kosovo Air Campaign. However, the use of Stop Loss in OIF/OEF represents a much longer term use of the program with an ongoing impact on tens of thousands of servicemembers and their families. The following summarizes the use of Stop Loss during OIF/OEF<sup>11</sup> by service.

### Army

The Army, the largest service and with the most servicemembers deployed to OIF/OEF, has used Stop Loss extensively and across all three components—active Army, Army Reserve and Army National Guard. It is also the only service that continues to use its Stop Loss authority. A table depicting the number of Stop Loss soldiers, by month, is at **Appendix**.

In the initial stages of Operation Enduring Freedom (OEF), the Army used a skill-based program for selected critical skills—Special Operations, Aviation, Military Intelligence, Military Police and Civil Affairs/Psychological Operations. This program was later modified to limit the Stop Loss

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<sup>8</sup> A Proclamation by the President of the United States of America, *Declaration of National Emergency by Reason of Certain Terrorist Attacks*, September 14, 2001.

<sup>9</sup> Executive Order 13223, *Ordering the Ready Reserve of the Armed Forces to Active Duty, and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation*, September 14, 2001.

<sup>10</sup> According to R. Chuck Mason of CRS' American Law Division, *Santiago v. Rumsfeld* (425F.3d 549) held that Stop Loss did not exceed the President's statutory authority and *Doe v. Rumsfeld* (435F.3d 980) held that Stop Loss is a valid exercise of presidential power authorized by 10 U.S.C. 12305; it comports with the *Fifth Amendment's Due Process Clause* and is a proper delegation of congressional power.

<sup>11</sup> A chronological summary of Stop Loss actions by service and the occupational specialties that were impacted can be found in Appendix VI: Service Stop-Loss Policies since September 11, 2001 in GAO Report 04-1031, *Military Personnel: DOD Needs to Address Long-term Reserve Force Availability and Related Mobilization and Demobilization Issues*, September 15, 2004.



period to no more than 12 months for all soldiers. The Army National Guard and Army Reserve, on the other hand, adopted a unit-based program that precluded separation or retirement from the time the unit was alerted for mobilization to 90 days following the redeployment.

In preparation for Operation Iraqi Freedom, all Army components instituted a unit-based program that retained soldiers from the time of the unit's deployment or mobilization date minus 90 days through the redeployment or demobilization date plus a maximum of 90 days. This 90 day period following redeployment or demobilization is designed for transition activities to better prepare the individual for reintegration into the civilian environment.

The Army briefly terminated its unit-based Stop Loss program in mid-2003 and instituted a skill-based program impacting approximately 25 job skills, commonly referred to as Military Occupational Specialties (MOS). However, in late 2003 the Army reinstated the unit-based program that continues today. As a result, the Army's active and reserve components all currently have the same unit-based Stop Loss program. The primary purpose of unit-based Stop Loss is to provide trained, ready and cohesive units to OIF and OEF.

As implemented by the Army, however, Stop Loss applies to both deployable and non-deployable personnel. The deciding criteria is whether they are assigned to the unit. Non-deployable personnel are normally assigned to the unit's rear detachment. As a result, a soldier with a temporary non-deployable medical condition would still be subject to Stop Loss if the unit was alerted for deployment. Those in Stop Loss status remain eligible for promotion and school selection.

## **Navy**

The Navy implemented a skill-based Stop Loss program for the first year of OEF. Due to the unknown nature of the operational requirements, the number of critical skills initially identified to support the contingency was overstated. This group included special operations, explosive ordnance disposal, security, physicians, nurses, linguists and cryptologic personnel. Originally, over 10,000 officers and enlisted personnel were identified as possessing these critical skills.

The initial program was rescinded but was followed approximately six months later with a more targeted program to retain hospital corpsmen in support of the Marine Corps. This program initially identified approximately 2,600 personnel but the program only lasted for one month and actually affected fewer than 100 sailors. The Navy halted its Stop Loss program in August 2002.

The Navy did not conduct monthly accounting of the numbers of personnel impacted by Stop Loss, consequently neither the numbers of personnel impacted by the program during any given month nor the average length of time individuals were affected by the program are available.

## **Air Force**

The Air Force's use of Stop Loss occurred during the initial stages of OIF, from March through June 2003. The Air Force initially targeted 43 officers and 56 enlisted high-demand career fields

which affected 6,172 active duty officers, 4, 858 active duty enlisted, 834 Guard and Reserve officers, and 3,030 Guard and Reserve enlisted members.<sup>12</sup>

## Marine Corps

The Secretary of the Navy authorized the Marine Corps Stop Loss program in early 2002. This unit-based program affected fewer than 10,000 Marines and lasted for five months. It was followed by a highly selective program that was implemented in two phases. The first phase was used to stabilize the personnel assigned to a newly formed anti-terrorism brigade and impacted approximately 560 Marines. The second phase only included Marines assigned to C-130 aircrew positions. The Marine Corps rescinded its Stop Loss program in May 2003.

While its program was in effect, the Marine Corps was the only service to grant individual exemptions to Stop Loss. Under their policy, the first General Officer in a Marine's chain of command could exempt a Marine from Stop Loss.

## DOD

Shortly after being confirmed as Secretary of Defense, Robert M. Gates tasked the services with minimizing the use of Stop Loss for both active and reserve component forces.<sup>13</sup> At the time when the memo was released, only the Army was still using its Stop Loss authority and maintained that the program was still necessary to ensure that only trained and ready units were deployed to Iraq and Afghanistan.<sup>14</sup> Even with the emphasis on minimizing or eliminating the use of Stop Loss, defense officials currently estimate that Stop Loss will continue to be used by the Army through at least 2009.<sup>15</sup>

## What is the Impact of Stop Loss on Individual Soldiers?

As implemented by the Army, Stop Loss affects both active and reserve component soldiers from 90 days prior to their unit deployment date (active component) or mobilization date (Guard and Reserve), through the deployment (currently 12 months for units deployed to OIF and OEF) and for a maximum of 90 days following the redeployment. The 90 days following redeployment is to allow adequate time for transition activities.

As a "worst case" scenario, a soldier who was scheduled to separate from active duty 90 days prior to the deployment date would be involuntarily retained in the unit for those three months plus 12 months<sup>16</sup> of deployment plus up to 90 days of redeployment and transition; a potential

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<sup>12</sup> Statement of Craig W. Duehring, Assistant Secretary, Manpower and Reserve Affairs, U.S. Air Force before the House Appropriations Committee, Subcommittee on Defense, March 17, 2009.

<sup>13</sup> Secretary of Defense Memorandum, *Subject: Utilization of the Total Force*, January 19, 2007.

<sup>14</sup> Secretary of the Army Memorandum: *Subject: Army's Response to Minimizing the Use of Stop Loss Policy*, March 7, 2007.

<sup>15</sup> Army Times, *Stuck on Stop Loss*, Michelle Tan, May 5, 2008.

<sup>16</sup> The Army has maintained a 12-month deployment cycle except immediately before and during the 2007-2008 (continued...)

involuntary extension of up to 18 months. In this example, an enlistment that specified four years of active duty would have grown to five and a half years on active duty. However, even a maximum enlistment of six years and an involuntary extension of 18 months would be less than the contractual eight year Military Service Obligation (MSO).

According to DOD officials, there are four primary factors that affect the number of soldiers subject to Stop Loss:

1. **The length of the deployment.** As the length of the deployment increases, e.g., the recent Army increase from 12 to 15 month deployments for OIF during the “surge” in Iraq, the number of soldiers in Stop Loss status also increases.
2. **The number of units deployed.** As more units are deployed, e.g., the recent “surge” in Iraq from 15 to 20 Brigade Combat Teams (BCT), the number of soldiers affected by Stop Loss increases.
3. **The distribution of separation dates within a unit.** A somewhat random factor but the more soldiers in the unit with separation dates after their scheduled redeployment, the fewer who would be affected by Stop Loss.
4. **Units alerted for out-of-cycle deployments.** As more units are notified of deployment dates that are sooner than what was originally planned, the more soldiers who will be affected by Stop Loss.

The relationship between the number of deployed Brigade Combat Teams (BCT) and the length of the deployment has been modeled by DOD to demonstrate the impact of Stop Loss on individual soldiers. The model shows that if there are 15 BCTs deployed on a 12-month rotation cycle, the average soldier impacted by Stop Loss will be involuntarily extended by 4.8 months. If the number of deployed BCTs increases from 15 to 20 and if the rotation cycle increases from 12 to 15 months, the average soldier retained by Stop Loss will spend an average of 6.6 additional months on active duty.

## Why Deploy Units Rather Than Individuals?

The need for Stop Loss is directly linked to the Army’s rotation methodology for OIF/OEF which emphasizes the rotation of units rather than individuals. The Army, in particular, has long struggled with the issue of using individual or unit replacements, attempting to balance the benefits to unit cohesion with a personnel system that emphasizes individual career development. It has long been believed that stabilizing personnel in units would improve readiness and allow the unit to operate more effectively as a team. However, from World War II through Vietnam, units were initially deployed to the combat theater and individual replacements were then used to compensate for those who were killed, wounded or rotated out for various reasons. The unit remained in the combat theater but its composition and identity changed dramatically over time with this personnel turnover.

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(...continued)

“surge” of forces in Iraq when the deployment period was extended to 15 months. The Marine Corps uses a 7-month deployment cycle.

During WWII, individual replacements were trained by replacement centers, shipped to a replacement depot and called forward into combat units as necessary. With no prior unit affiliation, these replacements were “military orphans” with little esprit de corps and no cohesion. With no previous combat experience, these replacements struggled to be integrated into the pre-existing “band of brothers” in the unit and many quickly became casualties themselves,<sup>17</sup> in part because they were unfamiliar with unit operations.

Once a soldier was wounded or separated from his unit during WWII, there was little chance of returning to the same unit. When cleared to return to duty, these soldiers were also sent to a replacement depot and would be reassigned to whatever unit then needed his particular skills. To avoid a new unit and remain with their comrades, many wounded soldiers concealed their injuries and remained with their units.

Again in Korea, units were sustained by individual replacements. Some attempts were made to recruit, train, and deploy small, 4 to 5 man teams that were supposed to be assigned to the same unit but this seldom occurred due to the combat tempo. Korea also saw the introduction of an individual rotation program based on time exposed to combat.<sup>18</sup> Rather than serving in combat until killed, injured, or the war ended, individuals in Korea were returned stateside after serving a specified number of months. This rotation policy also increased the personnel turnover.

In Vietnam, individual servicemembers were continuously rotating in and out based on when they completed their one-year tour or deployment. As a result, there was very little unit cohesion and new personnel were a continuous training challenge. This turbulence was exacerbated by a command tour policy that saw unit leaders serving only six months in command while soldiers served a year in the unit.

From WWII through Vietnam, this soldier replacement method was referred to as the Individual Replacement System and it was frequently cited for causing an unacceptably high level of personnel turbulence and for inhibiting the formation of cohesive units, especially in the combat arms. Recognizing the importance of unit stability to overall combat readiness, the Army, since the end of Vietnam, has attempted at least four different systems<sup>19</sup> of *unit replacement*, each designed to keep soldiers and leaders together longer. However, each of these proved unsatisfactory to the Army’s leadership and the most recent was discontinued at the beginning of the buildup for Operation Desert Shield/Storm.

Since 2004, the Army has pursued unit stabilization through the Unit Manning System to ensure that trained and ready units were available for deployment. This system is focused on Brigade Combat Teams (BCT) and linked into the Army’s Force Generation Model. This model categorizes units through a progression of deployment preparedness from retraining to ready to available.<sup>20</sup> However, even this most recent attempt at unit stabilization to enhance readiness has depended upon the use of Stop Loss to minimize personnel turbulence.

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<sup>17</sup> MilitaryHistoryOnline.com, *The U.S. Army in World War II: Manpower and Segregation* by Rich Anderson. Published online, 2000.

<sup>18</sup> For a detailed review of unit stabilization and replacement policies in WWII, Korea and Vietnam, see the Center for Strategic and Budgetary Assessments, *Forging the Sword: Unit-Manning in the U.S. Army*, by Pat Towell, September 2004.

<sup>19</sup> Military Review, “A History of Unit Stabilization” by John R. Brinkerhoff, May-June 2004.

<sup>20</sup> For additional details on the Force Generation Model, see CRS Report RL32476, *U.S. Army’s Modular Redesign*: (continued...)

## Has There Been Any Recent Legislation Regarding the Stop Loss Program?

The FY2002 National Defense Authorization Act (NDAA) included two provisions regarding the Stop Loss program. The first focused on those who had been extended by Stop Loss beyond their mandatory retirement or separation and were denied a transition period upon completion of their OIF/OEF tour. The provision<sup>21</sup> authorized Service Secretaries to extend these servicemembers on active duty for 90 days to provide additional time to prepare for retirement or separation.

The second focused on the issue of special or incentive pay which, at the time, could not be paid beyond the ending date of a servicemember's active duty commitment. In this instance, the provision<sup>22</sup> authorized the continuation of all special and incentive pays during the entire period of involuntary retention resulting from Stop Loss.

The FY2006 NDAA emphasized the importance of informing potential and current servicemembers about the possibility of Stop Loss by requiring two reports from DOD.<sup>23</sup> The first report was required to address the actions being taken by DOD to ensure that those being recruited for the armed forces were aware of Stop Loss and the further possibility of being recalled from the Individual Ready Reserve (IRR) following their active duty obligation. In response, DOD revised the enlistment contract<sup>24</sup> to explicitly explain Stop Loss and is to provide a briefing on Stop Loss prior to any potential recruit signing the enlistment contract. The second report required the services to provide Stop Loss and IRR Recall information periodically during a member's enlistment.

In response to the FY2006 NDAA, DOD revised the somewhat vague reference to Stop Loss in the enlistment contract to explicitly state:

“During any period members of a Reserve component are serving on active duty pursuant to an order to active duty under authority of 10 U.S.C. 12301, 12302, or 12304, the President may suspend any provision of law relating to my promotion, retirement, or separation from the Armed Forces if he or his designee determines I am essential to the national security of the United States. Such an action may result in an extension, without my consent, of the length of service specified in this agreement. Such an extension is often called a “stop-loss” extension.”

Legislation introduced in the 110<sup>th</sup> Congress sought to establish a special pay for any servicemember in Stop Loss status in the amount of \$1,500 per month and would have made this authority retroactive to October 1, 2001 for an estimated 160,000 personnel.<sup>25</sup> However, this legislation was not included in the FY2009 Duncan Hunter National Defense Authorization Act (NDAA).

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(...continued)

*Issues for Congress*, by Andrew Feickert.

<sup>21</sup> Section 508, FY2002 National Defense Authorization Act, P.L. 107-107, December 28, 2001.

<sup>22</sup> Section 623, FY2002 National Defense Authorization Act, P.L. 107-107, December 28, 2001.

<sup>23</sup> Section 546, FY2006 National Defense Authorization Act, P.L. 109-163, January 6, 2006.

<sup>24</sup> Department of Defense Forms 4/1 through 4/3, July 2007.

<sup>25</sup> H.R. 6205 and S. 3060.

While the FY2009 NDAA was silent on the issue of Stop Loss, the FY2009 omnibus appropriations act<sup>26</sup> authorized a maximum Stop Loss special pay of \$500 per month for any servicemember in Stop Loss status during any month or portion thereof during FY2009. The amount of \$72 million was appropriated for this purpose. This provision is not retroactive to 9/11 and the authority for this special pay expires on September 30, 2009.

Some observers have noted that including this authority in the appropriations act may be a technical violation of congressional budget rules since new benefits or programs should first be authorized in separate legislation before funds are appropriated unless it is a temporary emergency measure. Since funds in the omnibus act are limited to FY2009 and since the authority will expire at the end of this fiscal year, some suggest that this qualifies as a temporary measure.

Prior to obligating or expending funds for Stop Loss, DOD is required by the legislation to submit an implementation plan to the Committees on Appropriations. Within 180 days of enactment, DOD must also submit a report that examines the impact of Stop Loss on recruiting and any correlation between extended deployments and domestic assaults, sexual assaults and alcohol offenses. An additional requirement stipulates that Stop Loss data must be included in the end strength portion of the FY2010 President's Budget.<sup>27</sup>

## Has Stop Loss Had an Impact on Recruiting?

Some observers predicted that the perceived unpopularity of the Stop Loss program would have a negative impact on recruiting and the vitality of the all-volunteer military. At the height of the insurgency in Iraq and with mounting casualties, the Army did miss its quantitative recruiting goal in FY2005; with a recruiting target of 80,000, the Army recruited 73,373 new recruits for a shortfall of 8.3%.

By increasing the number of recruiters, increasing the service's advertising budget, and raising the maximum amount of enlistment bonuses from \$20,000 to \$40,000, the Army was able to achieve its recruiting mission of 80,000 in each of FY2006, 2007 and 2008<sup>28</sup>, in spite of the very difficult recruiting environment. Even with this quantitative success, most analysts remain concerned about the decline in recruit quality as measured by the number of high school diploma graduates, the number of moral waivers<sup>29</sup> being required, and the increase in the number of recruits from the lowest acceptable mental category. Retention has been successful, annually meeting or exceeding the numerical goals.

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<sup>26</sup> Section 8116, H.R. 2638, Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 which became P.L. 110-329, September 30, 2008.

<sup>27</sup> Congressional Record, Explanatory Statement Regarding the Amendments of the House of Representatives to the Senate Amendment to H.R. 2638, p. H9438, September 24, 2008.

<sup>28</sup> Additional details on the FY2006 and FY2007 recruiting program are discussed in CRS Report RL32965, *Recruiting and Retention: An Overview of FY2006 and FY2007 Results for Active and Reserve Component Enlisted Personnel*, by Lawrence Kapp and Charles A. Henning.

<sup>29</sup> To enlist in the armed forces, a moral waiver is required for past criminal behavior which includes traffic offenses, drug use, misdemeanors and most felony convictions. Individuals who have committed certain crimes (drug trafficking, multiple felonies, sexually violent crimes) are automatically excluded from waiver consideration and barred from enlisting.

Recruiting for the Army Reserve and Army National Guard has been somewhat more problematic from year to year but both components have continued to recruit in the range of 95-100% of the annual objective.

One area of special concern has been the potential impact of Stop Loss on the “Influencers”; the parents, teachers and coaches who are viewed as the key to recruiting success. While the number of these influencers who would support a young person joining the military declined as the “long war” continued, the most current assessment reflects that 59% of these “influencers” now support joining the military.<sup>30</sup>

Since the beginning of OEF/OIF, there has been no definitive survey data that would demonstrate that a shortfall, either in quantity or quality, has been directly attributable to the Stop Loss Program. With the recent economic downturn and a rising unemployment rate, any concern about Stop Loss from potential recruits may be overshadowed by the military becoming an increasingly attractive and financially secure option.

## Has Stop Loss Improved Unit Readiness?

According to the Army, Stop Loss is used sparingly and only affects about 1% of the Total Army (Active, Reserve, and National Guard). With a total force of approximately 1,200,000 and an average of 12,000 soldiers in Stop Loss status, the Army’s claim is correct but may lead some observers to conclude that terminating Stop Loss would therefore have a negligible (1%) impact on readiness.

However, assuming that most or all soldiers in Stop Loss status are deployed to OIF or OEF allows for a more realistic assessment of the potential impact of Stop Loss on personnel readiness. With 12,204 soldiers<sup>31</sup> in Stop Loss status and 129,700 Army soldiers currently deployed<sup>32</sup> to OIF/OEF, those in Stop Loss status represent nearly 10% of the deployed force. Observers note that requiring units to deploy with a personnel shortage of 10% or more would likely have a significant detrimental impact on unit readiness.

A more serious dimension of the readiness problem is that approximately 45% of the Stop Loss cohort are noncommissioned officers (NCOs) in grades E5 (Sergeant) through E9 (Sergeant Major) who have declined to reenlist or submitted voluntary retirement requests, if eligible. These NCOs are the leadership backbone of small units and a key to the unit’s tactical success. Observers note that deploying without these key NCOs at squad, platoon and company level or losing them immediately prior to deployment would likely have a substantial adverse impact on unit training, cohesion, and stability.

The Army’s deployment criteria for Brigade Combat Teams requires that they achieve 105% of their authorized enlisted strength and 95% of their authorized officer strength at 90 days prior to

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<sup>30</sup> Christian Science Monitor, “Americans’ Views of Military Service Improve,” by Gordon Lubold, November 10, 2008.

<sup>31</sup> See September 2008 data at **Appendix**.

<sup>32</sup> DOD Information Paper, *Congressional Research Service Request for Boots on the Ground (BOG) Statistics for Iraq and Afghanistan*, September 1, 2008.

deployment. Without Stop Loss, these units might be unable to meet this criteria and would deploy in a somewhat degraded readiness posture.

## **Does Stop Loss Have Any Impact on End Strength?**

The Army fought the first several years of OIF/OEF with an active duty end strength of 482,400, which many Members of Congress and defense observers thought was too low in light of operational demands. However, this level was strongly supported by both DOD and the Army. In a rather dramatic change of position, the newly appointed Secretary of Defense announced on January 19, 2007 that he would seek approval to increase the end strength of both the Army and the Marine Corps.<sup>33</sup>

Subsequently, Congress approved an end strength increase for the active Army from 482,400 to 547,400 by the end of FY2012<sup>34</sup>. This represents an increase of 65,000. The Army intends to achieve this new, higher end strength by the end of FY2010, two years earlier than mandated by Congress.

However, as Congress monitors the growth of the Army, it should be noted that the Stop Loss program may artificially inflate the actual end strength. For example, if the Army reports an FY2008 end strength of 530,000, this number would include nearly 7,500 active duty soldiers who have been involuntarily retained beyond their initial obligation. The actual end strength would have been only 522,500 soldiers if the Stop Loss contingent had been allowed to separate or retire as their normal terms of active duty expired. As a result, continuing to grow the Army may require additional recruiting or retention targets to negate the effect of Stop Loss on Army end strength.

## **Has “Grow the Army” Reduced the Need for Stop Loss?**

The mandated 65,000 soldier increase in active Army end strength from 482,400 to 547,400 by FY2012, as discussed earlier, is commonly referred to as the “Grow the Army” initiative. Through recruiting and retention efforts the Army plans to complete this growth by 2010, two years earlier than required by Congress. Based on recent indicators, the Army appears to be able to meet this growth objective.

Some observers have noted that the Army could divert some of this increase to minimizing or eliminating the need for Stop Loss. However, it appears that the Army is more committed to growing its force structure from 42 to 48 Brigade Combat Teams and from 75 to 83 Modular Support Brigades and will therefore continue to use Stop Loss to reduce unit shortages.

Another possible option would be to continue the Stop Loss program for all NCOs, recognized as critical to small unit leadership and cohesion, but eliminate the program for all junior enlisted

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<sup>33</sup> Department of Defense (DOD) Press Transcripts, DOD News Briefing with Under Secretary of Defense David Chu, Lieutenant General Stephen Speakes, and Lieutenant General Emerson Gardner from the Pentagon, January 19, 2007.

<sup>34</sup> Section 403, P.L. 110-181.



personnel, most of whom would be serving their initial enlistment. While the Army has experience with both unit-based and skill-based Stop Loss, this option would require implementation of a Grade (or Rank)-based Stop Loss program.

## Suspension of the Stop Loss Program

On March 18, 2009, Secretary of Defense Gates announced the phased suspension of the Army's Stop Loss program that is intended to eliminate the regular use of Stop Loss. The table below reflects the Army component and the date for suspending the use of Stop Loss.

**Table I. Phased Implementation of Stop Loss Suspension**

| Component           | Stop Loss Suspension Date |
|---------------------|---------------------------|
| Active Army         | January 1, 2010           |
| Army National Guard | September 1, 2009         |
| Army Reserve        | August 1, 2009            |

**Source:** Ann Scott Tyson, "Army to Phase Out 'Stop Loss' Practice, Washington Post, March 19, 2009.

While the services will retain the legal authority to suspend the separation of servicemembers, any renewed use of Stop Loss would require an emergency situation requiring critically short skills, would be of a limited duration requirement, and would require the approval of the Service Secretary.

On April 1, 2009, the Army began paying the \$500 per month Stop Loss special pay authorized by the FY2009 Omnibus Appropriations Act. All soldiers currently in Stop Loss status are to receive this monthly pay. In addition, the pay is to be retroactive to October 1, 2008 and is to automatically be paid to soldiers who have separated but who were in Stop Loss status between October 1, 2008 and April 1, 2009. The retroactive payments should be completed by June 2009.

To compensate for the suspension of Stop Loss, the Army has announced a \$500 per month incentive program to entice soldiers to extend past their normal separation date and stay with their unit through a normal deployment cycle. The program requires soldiers to extend from six to nine months prior to the scheduled deployment date to qualify for the full \$500/month incentive pay. This incentive pay will be federal tax free while the soldier is deployed to OIF/OEF. Similar incentive programs are being planned for the Army Reserve and Army National Guard but have not been announced yet.

## Retroactive Stop Loss Payments

As noted earlier, the FY2009 Omnibus Appropriations Act authorized Stop Loss payments of \$500 per month but limited this special pay to soldiers in Stop Loss status for any month or portion thereof during FY2009. This special pay will expire on September 30, 2009. Many supporters of the special pay provision were disappointed that the pay was not retroactive to

September 11, 2001, a time when all four Services used some form of their Stop Loss authority to support military operations.

To address this issue, the FY2009 Defense Supplemental<sup>35</sup> appropriated \$534.4M<sup>36</sup> to provide retroactive Stop Loss special pay for approximately 185,000 former or retired, active or reserve component servicemembers who were in Stop Loss status during the period September 11, 2001, through September 30, 2009. These funds may only be used for the Stop Loss special pay and are not available to the Services for other purposes. Consistent with the original program, the retroactive pay will also be \$500 per month or portion thereof and will be tax free for any month that the servicemember was in a combat zone. For example, a former soldier who served eight months in Iraq in Stop Loss status would be authorized \$4,000 in retroactive special pay.

Former servicemembers will have a one year window for submitting claims and the one year period begins on the date that DOD publishes the implementing program guidance. Payments beyond the one-year period are specifically prohibited by the legislation.

The implementing guidance must be published by October 24, 2009. In addition, the Secretary of Defense is required to report the status of the program one year after the guidance has been published and every six months thereafter until all the funding has been obligated and all claims have been processed.

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<sup>35</sup> Section 310, P.L. 111-32, June 24, 2009.

<sup>36</sup> The House originally proposed a \$734.4M retroactive Stop Loss program but this amount was reduced by \$200M in the conference report.

## Appendix. Army Stop Loss Totals by Month (Enlisted Only)

| Month/Year      | Active Army | National Guard | Army Reserve | Total  |
|-----------------|-------------|----------------|--------------|--------|
| November 2004   | 5,984       | 2,460          | 2,984        | 11,428 |
| December, 2004  | 6,640       | 3,016          | 3,459        | 13,115 |
| January, 2005   | 7,872       | 2,086          | 4,527        | 14,485 |
| February, 2005  | 8,348       | 2,199          | 4,196        | 14,743 |
| March, 2005     | 9,045       | 2,681          | 4,032        | 15,758 |
| April, 2005     | 9,044       | 2,480          | 3,762        | 15,286 |
| May, 2005       | 7,986       | 2,480          | 3,616        | 14,082 |
| June, 2005      | 7,951       | 2,447          | 3,392        | 13,790 |
| July, 2005      | 7,325       | 2,772          | 3,280        | 13,377 |
| August, 2005    | 7,458       | 2,953          | 2,970        | 13,381 |
| September, 2005 | 6,929       | 3,002          | 2,847        | 12,778 |
| October, 2005   | 7,803       | 2,962          | 2,602        | 13,367 |
| November, 2005  | 8,383       | 2,840          | 2,473        | 13,696 |
| December, 2005  | 7,620       | 2,429          | 2,418        | 12,467 |
| January, 2006   | 8,826       | 2,250          | 2,238        | 13,314 |
| February, 2006  | 9,282       | 2,336          | 2,231        | 13,849 |
| March, 2006     | 8,968       | 1,953          | 1,945        | 12,866 |
| April, 2006     | 7,782       | 2,242          | 1,994        | 12,018 |
| May, 2006       | 6,040       | 2,190          | 2,000        | 10,230 |
| June, 2006      | 6,130       | 2,160          | 1,864        | 10,154 |
| July, 2006      | 6,408       | 2,113          | 1,894        | 10,415 |
| August, 2006    | 7,061       | 2,134          | 1,815        | 11,010 |
| September, 2006 | 8,045       | 2,132          | 1,806        | 11,983 |
| October, 2006   | 8,742       | 2,286          | 1,645        | 12,673 |
| November, 2006  | 8,697       | 2,201          | 1,645        | 12,543 |
| December, 2006  | 7,072       | 2,036          | 1,603        | 10,711 |
| January, 2007   | 7,148       | 2,053          | 1,537        | 10,738 |
| February, 2007  | 6,207       | 2,004          | 1,556        | 9,767  |
| March, 2007     | 5,364       | 2,006          | 1,536        | 8,906  |
| April, 2007     | 5,185       | 2,103          | 1,432        | 8,720  |
| May, 2007       | 4,946       | 2,125          | 1,469        | 8,540  |
| June, 2007      | 5,355       | 2,313          | 1,501        | 9,169  |
| July, 2007      | 5,238       | 2,401          | 1,520        | 9,159  |
| August, 2007    | 5,874       | 2,275          | 1,459        | 9,608  |

| <b>Month/Year</b> | <b>Active Army</b> | <b>National Guard</b> | <b>Army Reserve</b> | <b>Total</b> |
|-------------------|--------------------|-----------------------|---------------------|--------------|
| September, 2007   | 6,322              | 2,325                 | 1,464               | 10,111       |
| October, 2007     | 6,940              | 2,199                 | 1,324               | 10,463       |
| November, 2007    | 7,627              | 2,020                 | 1,363               | 11,010       |
| December, 2007    | 7,407              | 2,027                 | 1,370               | 10,801       |
| January, 2008     | 7,690              | 2,168                 | 1,440               | 11,298       |
| February, 2008    | 7,227              | 2,267                 | 1,478               | 10,972       |
| March, 2008       | 6,868              | 3,879                 | 1,488               | 12,235       |
| April, 2008       | 6,547              | 3,838                 | 1,561               | 11,946       |
| May, 2008         | 6,728              | 3,803                 | 1,523               | 12,054       |
| June, 2008        | 7,011              | 3,903                 | 1,419               | 12,333       |
| July, 2008        | 6,828              | 3,801                 | 1,308               | 11,937       |
| August, 2008      | 6,824              | 3,934                 | 1,475               | 12,233       |
| September, 2008   | 6,714              | 4,025                 | 1,465               | 12,204       |
| October, 2008     | 6,915              | 4,036                 | 1,465               | 12,416       |
| November, 2008    | 6,884              | 4,177                 | 1,552               | 12,613       |
| December, 2008    | 7,176              | 4,349                 | 1,432               | 12,957       |
| January, 2009     | 7,307              | 4,458                 | 1,452               | 13,217       |
| February, 2009    | 6,878              | 4,389                 | 1,473               | 12,740       |
| March, 2009       | 6,420              | 4,347                 | 685                 | 11,452       |
| April, 2009       | 5,872              | 4,377                 | 981                 | 11,230       |
| May, 2009         | 5,870              | 4,313                 | 820                 | 11,003       |

**Source:** Army G-1

**Note:** Data above is not cumulative. Rather, it represents a “snapshot” at the end of the respective month.

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