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Reserve Component Personnel Issues: Questions and Answers

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Reserve Component Personnel Issues: Questions and Answers

Summary

The term “Reserve Component” is often used to refer collectively to the seven individual reserve components of the armed forces: the Army National Guard of the United States, the Army Reserve, the Navy Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, and the Coast Guard Reserve. The role of these seven reserve components, as codified in law at 10 U.S.C. 10102, is to “provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency, and at such other times as the national security may require, to fill the needs of the armed forces whenever...more units and persons are needed than are in the regular components.”

During the Cold War era, the reserve components were a manpower pool that was rarely tapped. For example, from 1945 to 1989, reservists were involuntarily activated by the federal government only four times, an average of less than once per decade. Since the end of the Cold War, however, the nation has relied more heavily on the reserve components. Since 1990, reservists have been involuntarily activated by the federal government six times, an average of once every two years. This increasing use of the reserves has led to greater congressional interest in the various issues, such as funding, equipment, and personnel policy, that bear on the vitality of the reserve components. This report is designed to provide an overview of key reserve component personnel issues.

This report provides insight to reserve component personnel issues through a series of questions and answers: how many people are in different categories of the reserve component (question 3); how reserve component personnel are organized (questions 2 and 4); how reserve component personnel have been and may be utilized (questions 1, 5, 6, 7, 9, and 11); how reserve component personnel are compensated (questions 8 and 10); the type of legal protections that reserve component personnel enjoy (question 12); recent changes in reserve component pay and benefits made by Congress (question 13); and reserve component personnel issues that might be of particular interest to the 109th Congress (question 14).

This report will be updated as needed.

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Reserve Component Personnel Issues: Questions and Answers

1. What Is the Reserve Component? What Is its Role?

The term “Reserve Component” is often used to refer collectively to the seven individual reserve components of the armed forces: the Army National Guard of the United States, the Army Reserve, the Navy Reserve,¹ the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, and the Coast Guard Reserve. The role of these seven reserve components, as codified in law, is to “provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency, and at such other times as the national security may require, to fill the needs of the armed forces whenever more units and persons are needed than are in the regular components.”² The Army National Guard and the Air National Guard also have a state role: In addition to the role of providing trained units and personnel to the armed forces of the United States, they also assist the states in responding to various emergencies, such as disasters and civil disorders. (For more information on the difference between the National Guard and other reserve components, see questions 5 and 11).

2. What Are the Different Categories of Reservists?

All reservists, whether they are in the Reserves or the National Guard,³ are assigned to one of three major reserve categories: the Ready Reserve, the Standby Reserve, or the Retired Reserve. Reservists who are assigned to the Ready Reserve

¹ The National Defense Authorization Act for FY2006 (P.L. 109-163, section 515), recently changed the name of the Naval Reserve to the Navy Reserve.

² 10 U.S.C. 10102. The language was recently changed by P.L. 108-375, the Ronald W. Reagan National Defense Authorization Act for FY2005. Prior to this change, the language was as follows: “to provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency, and at such other times as the national security may require, to fill the needs of the armed forces whenever, during and after the period needed to procure and train additional units and qualified persons to achieve the planned mobilization, more units and persons are needed than are in the regular components.” The change in statutory language, as explained in a House Armed Services Committee report, would “clarify that the purpose of the reserve components is to provide trained units and qualified personnel not just as the result of involuntary mobilizations but whenever more units and persons are needed than are in the active component. The revision recommended by this section more accurately reflects recent and future employments of the reserve components.” House Report 108-491, p. 316.

³ For a discussion of the distinction between the Reserves and the National Guard, see questions 5 and 11.

are further assigned to one of its three sub-components: the Selected Reserve, the Individual Ready Reserve (IRR), or the Inactive National Guard (ING). The differences between each of these categories is explained below.

The Ready Reserve. The Ready Reserve is the primary manpower pool of the reserve components. Members of the Ready Reserve will usually be called to active duty before members of the Standby Reserve⁴ or the Retired Reserve. The Ready Reserve is made up of the Selected Reserve, the Individual Ready Reserve, and the Inactive National Guard, each of which is described below.

The Selected Reserve. The Selected Reserve contains those units and individuals most essential to wartime missions, in accordance with the national security strategy. They have priority over other reservists for training and equipment.⁵ Members of the Selected Reserve are generally required to perform one weekend of training each month (“inactive duty for training” or IDT, also known colloquially as “weekend drill”) and two weeks of training each year (“annual training” or AT, sometimes known colloquially as “summer camp”) for which they receive pay and benefits. Some members of the Selected Reserve perform considerably more military duty than this, while others may only be required to perform the two weeks of annual training each year or other combinations of time.⁶ Members of the Selected Reserve can be involuntarily ordered to active duty under a Presidential Reserve Call Up, a Partial Mobilization, or a Full Mobilization. (See question 9 for more information on mobilization authorities.)

The Individual Ready Reserve. The Individual Ready Reserve (IRR) is a manpower pool of individuals who have already received military training, either in the Active Component or in the Selected Reserve. Members of the IRR may be required to perform regular training, although DOD has not implemented such a requirement since the 1950s. Members of the IRR can volunteer for training or active duty assignments, and they can also be involuntarily ordered to active duty under a Presidential Reserve Call Up, a Partial Mobilization, or a Full Mobilization.

⁴ By law, units and members of units in the Standby Reserve may not be ordered to active duty (except for training) unless “the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough of the required kinds of units in the Ready Reserve that are readily available.” Similarly, members of the Standby Reserve not assigned to a unit may not “...be ordered to active duty (other than for training) as an individual without his consent, unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough qualified members in the Ready Reserve in the required category who are readily available.” 10 USC 12306 (b).

⁵ *Reserve Component Programs: Fiscal Year 1999 Report Of The Reserve Forces Policy Board*, Office of the Secretary of Defense, March 2000, 53.

⁶ For example, members of the Selected Reserve — especially in the Air Force Reserve and the Air National Guard — often volunteer to perform extra duty, while some members of the Individual Mobilization Augmentee (IMA) program may only perform two-weeks of training per year. Other members of the IMA program may be required to perform IDT training as well, but perform it during weekdays rather than on weekends.

(See question 9 for more information on mobilization authorities). There is no IRR in the Army National Guard or the Air National Guard, although there is an analogous category known as the Inactive National Guard (see immediately below).

The Inactive National Guard. The Inactive National Guard (ING) is made up of those members of the National Guard⁷ who are in an inactive status. They are not required to participate in training as are members of the Selected Reserve; however they are assigned to a specific National Guard unit and are required to meet with the unit once a year. Members of the ING can be involuntarily ordered to active duty if the unit they are attached to is ordered to active duty. As all National Guard units are considered to be part of the Selected Reserve, this means that members of the ING can be involuntarily ordered to active duty under a Presidential Reserve Call Up, a Partial Mobilization, or a Full Mobilization. (See question 9 for more information on mobilization authorities). The ING is, for practical purposes, the National Guard equivalent of the IRR.

The Standby Reserve. The Standby Reserve contains those individuals who have a temporary disability or hardship and those who hold key defense related positions in their civilian jobs.⁸ While in the Standby Reserve, reservists are not required to participate in military training and are subject to involuntary activation only in the case of a Full Mobilization. (See question 9 for more information on mobilization authorities).

The Retired Reserve. The Retired Reserve includes Reserve officers and enlisted personnel who are receiving retired pay as a result of their reserve and/or active service. It also includes Reserve officers and enlisted personnel who transfer into the Retired Reserve after qualifying for reserve retirement, but before becoming eligible to receive retired pay at age 60. Regular officers and enlisted personnel who are receiving retired pay are not included in the Retired Reserve. Members of the Retired Reserve may be involuntarily ordered to active duty in the event of a Full Mobilization, and some members of the Retired Reserve may be ordered to active duty in the event of a recall of retirees. (See question 9 for more information on mobilization authorities).

3. How Many People Are in the Reserve Components?

As of September 30, 2005, the total personnel strength of the Ready Reserve reported by DOD was 1,113,427. This figure is broken down by service and category of reservist in Table 1. In addition, there are another 22,773 members of the Standby Reserve and 634,524 members of the Retired Reserve, although these categories of reservists are much less likely to be mobilized than Ready Reservists are.

It is worth noting that the personnel strength of the Selected Reserve for the Army National Guard, Army Reserve, and Navy Reserve have all declined significantly over the past two years. Specifically from the end of FY2003 to the end

⁷ Currently, only the Army National Guard has personnel in the ING.

⁸ *Reserve Component Programs: Fiscal Year 1999 Report Of The Reserve Forces Policy Board*, Office of the Secretary of Defense, March 2000, 51.

of FY2005, the Army National Guard's Selected Reserve strength dropped from 351,089 to 333,177 (a decline of 17,912 or 5.1%), the Army Reserve's Selected Reserve strength dropped from 211,890 to 189,005 (a decline of 22,885 or 10.8%), and the Navy Reserve's Selected Reserve dropped from 88,156 to 76,466 (a decline of 11,690 or 13.3%). The reported FY2003 strength figures for the Army National Guard and Army Reserve were likely skewed upwards by the Army's stop-loss policy; nonetheless, the FY2005 strength figures for both of these Reserve Components were significantly below their FY2005 authorized end-strength of 350,000 (Army National Guard) and 205,000 (Army Reserve). The decline in the Navy Reserve's Selected Reserve strength should be interpreted in light of Navy plans to reduce the size of the Navy Reserve's Selected Reserve to 71,165 personnel by FY2007.

Table 1: Personnel Strength of the Reserve Components as of September 30, 2005⁹

	Selected Reserve	Individual Ready Reserve/Inactive National Guard	Standby Reserve	Retired Reserve	TOTAL
Army National Guard	333,177	1,505	0	0	334,682
Army Reserve	189,005	112,668	1,668	321,312	624,653
Navy Reserve	76,466	64,355	4,038	117,093	261,952
Marine Corps Reserve	39,938	59,882	1,129	14,693	115,642
Air National Guard	106,430	0	0	0	106,430
Air Force Reserve	75,802	41,319	15,897	174,326	307,344
Coast Guard Reserve	8,187	4,693	41	7,100	20,021
TOTAL	829,005	284,422	22,773	634,524	1,770,724

4. What Does “Full-time Support” Mean? What Are the Different Categories of Full-time Support for the Reserve Components?

Reserve units are primarily filled by “traditional” reservists: members of the Selected Reserve who are usually required to work one weekend a month and two weeks a year. However, most reserve units are also staffed by one or more full time civilian and/or military employees. These employees, known as full-time support (FTS) personnel, handle a variety of tasks, including “organization, administration, recruitment, instruction, training, maintenance and supply support to the Reserve Components.”¹⁰

⁹ Data provided by the Office of the Assistant Secretary of Defense for Reserve Affairs.

¹⁰ Department of Defense Directive 1205.18, “Full Time Support to the Reserve Components,” May 25, 2000, 2.

There are five types of FTS personnel: Active Guard & Reserve, Military Technician, Non-Dual Status Technicians, Active Component, and Civilian. The distinctions between each of these four categories is outlined below. The mix of FTS personnel in each of the reserve components is supposed “to optimize consistency and stability for each Reserve component to achieve its assigned missions.”¹¹

Active Guard and Reserve. Active Guard and Reserve (AGR) personnel are reservists who are placed on active duty orders for a period of 180 consecutive days or more for the purpose of “organizing, administering, recruiting, instructing, or training the Reserve components.”¹² They may also perform “duties relating to defense against weapons of mass destruction.”¹³ Although they are serving full-time, AGR personnel are still considered members of the Selected Reserve. They are usually required to attend weekend drills and annual training with the reserve unit to which they are assigned.

Depending on their branch of service, AGR personnel are referred to by different names. In the Army National Guard, Army Reserve, Air National Guard, and Air Force Reserve, they are simply referred to as AGRs, an acronym for Active Guard and Reserve. In the Navy Reserve they are referred to as TARs, an acronym for Training and Administration of Reserves. In the Coast Guard Reserve, they are referred to as RPAs, an acronym for Reserve Program Administrators. In the Marine Corps Reserve, they are known as Marine Corps Active Reserves or ARs.

Military Technicians. Military technicians (MTs) are federal civilian employees who provide support to reserve units, either in the administration and training in reserve component units, or by maintaining and repairing reserve component equipment and supplies.¹⁴ Unlike regular civilian employees, however, MTs are generally required to maintain membership in the Selected Reserve as a condition of their employment. These individuals are sometimes referred to as “dual-status military technicians,” reflecting their status as both federal civilian employees and military reservists. They are required to attend weekend drills and annual training with their reserve unit, which is usually the same unit they work for as civilians during the weekday. Military technicians can be involuntarily ordered to active duty in the same way as other members of the Selected Reserve (see question 2). There are no MTs in the Navy Reserve, the Marine Corps Reserve, or the Coast Guard Reserve.

Non-Dual Status Technicians. Non-dual status technicians (NDSTs) are civilian employees of the Department of Defense serving in military technician

¹¹ Department of Defense Directive 1205.18, “Full Time Support to the Reserve Components,” May 25, 2000, 2.

¹² Ibid, 8, referencing 10 USC 12310, which is quoted in part. AGR personnel can also serve in “at headquarters responsible for reserve affairs, to participate in preparing and administering the policies and regulations affecting those reserve components.” 10 USC 10211.

¹³ 10 USC 12310(c).

¹⁴ 10 USC 10216.

positions. They are referred to as “non-dual-status technicians” because they are not members of the Selected Reserve and, hence, do not have a dual military/civilian status like MTs.¹⁵ NDSTs perform the same functions as MTs, but cannot be involuntarily ordered to active duty. There are no NDSTs in the Navy Reserve, the Marine Corps Reserve, or the Coast Guard Reserve, and very few in the Air Force Reserve.

Active Component. Active Component (AC) personnel are active-duty members of the military who “are assigned or attached to Reserve component organizations or units by their respective Service to provide advice, liaison, management, administration, training, and support....”¹⁶ Although they are formally members of the Active Component, not the Reserve Component, AC personnel may deploy with the reserve unit they are assigned to if the unit is mobilized.

Civilians. Civilians are federal civil service employees who “provide administration, training, maintenance, and recruiting support to the Reserve components.”¹⁷ They are not required to hold membership in the Selected Reserve as a condition of their employment, although some do so voluntarily. Unless they are members of the reserve components, they cannot be involuntarily ordered to active duty.

5. What Is the Difference Between the “Reserves” and the “National Guard”?

Although the term “reserves” is often used as a generic term to refer to all members of the seven individual reserve components, there is an important distinction between the five reserve components which are purely federal entities (the Army Reserve, Navy Reserve, Marine Corps Reserve, Air Force Reserve, and Coast Guard Reserve) and the two reserve components which are both federal and state entities (the Army National Guard and the Air National Guard). In this context, the purely federal reserve components are sometimes referred to collectively as the Reserves, while the dual federal/state reserve components are referred to collectively as the National Guard.

The Reserves are of comparatively recent origin, having all been established in the 20th century. They were organized under Congress’ constitutional authority “to raise and support Armies” and “to provide and maintain a Navy.”¹⁸ The National Guard has a much longer historical pedigree. It is descended from the colonial era

¹⁵ 10 USC 10217. For more information on MTs and NDSTs, see CRS Report RL30487, *Military Technicians: The Issue of Mandatory Retirement for Non-Dual-Status Technicians*.

¹⁶ Department of Defense Directive 1205.18, “Full Time Support to the Reserve Components,” May 25, 2000, 8.

¹⁷ Department of Defense Directive 1205.18, “Full Time Support to the Reserve Components,” May 25, 2000, 8.

¹⁸ U.S. Constitution, Article 1, Section 8, clauses 12 and 13.

militia¹⁹ which existed prior to the adoption of the Constitution. The Constitution does, however, contain provisions that recognize the existence of the militia and that give the federal government a certain amount of control over it.²⁰

Unlike the Reserves, which are exclusively federal organizations, the National Guard is usually both a state and a federal organization. The National Guard of the United States is made up of 54 separate National Guard organizations: one for each state, and one for Puerto Rico, Guam, the U.S. Virgin Islands, and the District of Columbia. While the District of Columbia National Guard is an exclusively federal organization and operates under federal control at all times, the other 53 National Guards operate as state or territorial organizations most of the time. In this capacity, each of these 53 organizations is identified by its state or territorial name (e.g. the California National Guard or the Puerto Rico National Guard), and is controlled by its respective governor. *Due to their dual federal and state role, National Guardsmen can be called to duty in several different ways (see questions 9 and 11) and the mode of activation has important implications for the pay, benefits, and legal protections they receive (see questions 10 and 12).*

6. How Has the Role of the Reserve Components Changed in Recent Years?

In 2000, Charles Cragin, a former Assistant Secretary of Defense for Reserve Affairs, summed up the changing role of the reserve components in the following words: “The role of our Reserve forces is changing in the United States. We have seen their traditional role, which was to serve as manpower replacements in the event of some cataclysmic crisis, utterly transformed. They are no longer serving as the force of last resort, but as vital contributors on a day-to-day basis around the world.”²¹ His comments, well supported by historical data at the time he made them, became even more apt in the aftermath of the September 11th terrorist attack on the United States.

¹⁹ The colonial militia concept, which was derived from a longstanding English tradition and which required every able bodied white male to participate in the common defense of his town or locality, was the backbone of colonial military power. Gradually, as the colonial population grew and military threats waned, a distinction arose between the unorganized militia (those members of the militia who were potentially liable for military service but who did not actively participate in military training) and the organized militia (those members of the militia who regularly trained for war and who responded first to military threats). Today, the U.S. Code still recognizes the militia as consisting of “all able-bodied males at least 17 years of age and...under 45 years of age who are, or who have made a declaration of intention to become citizens of the United States and of female citizens of the United States who are members of the National Guard.” (10 USC 311) This provision of the law further divides the militia into the organized militia and the unorganized militia, and declares the National Guard and the Naval Militia to be the organized militia. At present the Naval Militia exists only in New York and Alaska.

²⁰ See U.S. Constitution, Article I, Section 8, clauses 15 and 16, and Article II, Section 2, clause 1.

²¹ Charles L. Cragin, Assistant Secretary of Defense for Reserve Affairs, remarks printed in *The Officer*, September 2000, 34.

During the Cold War era, the reserve components were a manpower pool that was rarely tapped. For example, from 1945 to 1989, reservists were involuntarily activated for federal service²² only four times, an average of less than once per decade. These activations occurred only during wartime and national emergencies: the Korean War (1950-1953; 857,877 reservists involuntarily activated), the Berlin Crisis (1961-62; 148,034 reservists involuntarily activated), the Cuban Missile Crisis (1962; 14,200 reservists involuntarily activated), and the Vietnam War/U.S.S. Pueblo Crisis (1968-69; 37,643 reservists involuntarily activated).

Since the end of the Cold War, however, the nation has relied more heavily on the reserve components. Since 1990, reservists have been involuntarily activated for federal service six times, an average of once every three years. Some of these activations have been directly related to war or armed conflict: for example, the Persian Gulf War (1990-91; 238,729 reservists involuntarily activated), the low-intensity conflict with Iraq²³ (1998-2003; 6,108 reservists involuntarily activated), and current military operations — Operation Noble Eagle, Operation Enduring Freedom, and Operation Iraqi Freedom — to enhance homeland security, destroy terrorist networks, and change the regime in Iraq,²⁴ respectively (2001-present; over

²² This category excludes those who served on active duty under voluntary orders or annual training order and excludes members of the National Guard serving in a state status (see question 11). Additionally, with the exception of those mobilized in response to the terrorist attacks of September 11, 2001, it excludes involuntary activations of reservists for domestic reasons, such as responding to civic disorders.

²³ In the aftermath of the 1991 Persian Gulf War, the United States maintained a substantial military presence in the region in order to enforce the terms of the cease-fire agreements. The United States used this military force to compel Iraqi compliance with the terms of the cease fire agreements on a number of occasions. One of the most significant U.S. confrontations with Iraq began in late 1997, in response to Iraqi interference in the conduct of U.N. weapons inspections. As tensions with Iraq mounted, the United States began to build up its forces in the Gulf region. Subsequently, a nearly constant low-intensity air war took place in and over Iraq: Iraqi anti-aircraft weapons fired on U.S. and allied aircraft; the allies responded by bombarding these and other military targets. On February 24, 1998, President Clinton ordered a Presidential Reserve Call-up (which is the activation of reservists under Title 10, Section 12304 of the United States Code; for more information on this authority, see 9). The first reservists called under this authority entered active duty on March 1, 1998. This low-intensity conflict with Iraq changed to a high-intensity conflict on March 20, 2003, with the commencement of Operation Iraqi Freedom. On May 1, 2003, all operations associated with the low-intensity conflict — such as Operation Northern Watch and Operation Southern Watch — became part of Operation Iraqi Freedom. Since then, reservists involuntarily activated for operations related to Iraq have been ordered to active duty under the post-September 11, 2001, Partial Mobilization (for more information on mobilization authorities, see question 9).

²⁴ Operation Noble Eagle is the name given to military operations related to homeland security and support to federal, state, and local agencies in the wake of the September 11 attacks. 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.

529,698 reservists involuntarily activated as of January 4, 2006).²⁵ Other activations have been in support of missions that were primarily peacekeeping and nation-building, such as the intervention in Haiti (1994-1996; 6,250 reservists involuntarily activated) and the Bosnian peacekeeping mission (1995-2004; 31,553 reservists involuntarily activated).²⁶ The ongoing Kosovo mission (1999-present; 11,485 reservists involuntarily activated as of November 30, 2005) has been a combination of armed conflict and peacekeeping.²⁷

It is important to point out that this tally of activations refers only to instances where reservists were involuntarily ordered into active federal service. It does not encompass the many instances where reservists have served on active duty under voluntary orders or annual training orders or, for members of the National Guard, service under state authority (see question 11 for more information on “state active duty” and duty under Title 32 of the U.S. Code).

Data from the Office of the Assistant Secretary of Defense for Reserve Affairs (OASD/RA) sheds more light on the growing contribution of reservists to federal missions. According to OASD/RA, reservists contributed about 1 million “man-days” per year to their respective services between fiscal years 1986 and 1989. This contribution increased since then to the point where reservists contributed about 13 million days of work per year between fiscal years 1996 and 2001. With the large mobilization of reservists in support of Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom, reservists contributed about 41.3 million days of work in FY2002, 62.0 million days in FY2003, 64.5 million days in FY2004, and 67.2 million days in FY2005.²⁸ The continuing mobilization of reservists to participate in these operations, probably for many years to come, lends further support to the idea that the Reserve Component has been transformed from a “force of last resort” in the Cold War era into an integrated part of the military services in the post-Cold War era.

²⁵ Between September 11, 2001 and January 4, 2006, 529,698 reservists (which includes the National Guard) were involuntarily called to active duty under federal orders for ONE, OEF, and OIF. Of these, 134,505 were serving on active duty as of January 4, 2006, while 395,193 had been demobilized prior to that date after completing their tours. Note, however, that the total mobilization and demobilization figures count reservists more than once if they have been mobilized more than once. Source: Colonel James Shoenhard, Office of the Assistant Secretary of Defense, Reserve Affairs, *NEEFIF Daily Mob-Demob Report*, January 4, 2006.

²⁶ On December 1, 2004, the last U.S. peacekeeping troops left Bosnia, as NATO handed over the stabilization mission to the European Union. However, a few hundred U.S. military personnel remain in Bosnia. Jim Garmone, American Forces Press Service, “U.S. Peacekeepers Finish Bosnia Mission, Case Colors,” December 1, 2004. The remaining few American military personnel in Bosnia may include some reservists mobilized under the authority of the Partial Mobilization for ONE/OEF/OIF. Those figures were not available from DoD.

²⁷ These numbers do not include reservists who have been mobilized under the authority of the Partial Mobilization for ONE/OEF/OIF and sent to Kosovo. Those figures were not available from DoD.

²⁸ Source: Office of the Assistant Secretary of Defense for Reserve Affairs, briefing slides on *Utilization of the Reserve Components*, January 2006, p. 6.

For more information on the history of reserve activations, see CRS Report RL30637, *Involuntary Reserve Activations for U.S. Military Operations Since World War II*, by Lawrence Kapp.

7. How Does the Posse Comitatus Act Affect Use of the Reserve Components to Handle Domestic Problems?

The Posse Comitatus Act (18 USC 1385), along with other related laws and administrative provisions, prohibits the use of the military to execute civilian laws unless expressly authorized by the Constitution or an act of Congress. As a part of the military, the reserve components are generally covered under these provisions and thus are restricted in the same way that active component forces are. However, there are important exceptions to this general rule.

First, Congress has made a number of exceptions to the Posse Comitatus Act which permit military involvement in law enforcement. For example, Congress has enacted a number of statutes which authorize the President to use military forces to suppress insurrections and domestic violence.²⁹ If these statutes were to be invoked, the President could use the reserve components in the same way as active component forces to put down a rebellion or to control domestic violence. Another important exception relates to the Coast Guard, which Congress has vested with broad law enforcement authority. Under these statutory provisions, the Coast Guard Reserve could participate, like its active component counterpart, in the enforcement of maritime, customs, and certain other federal laws.

Second, when acting in its capacity as the organized militia of a state, the National Guard is not part of the federal military and thus is *not* covered by the Posse Comitatus Act. Only when it is called into federal service does the National Guard become subject to the Act. As such, the National Guard can be used by state authorities to enforce the law. For example, while acting in a state capacity, the National Guard has been used for riot control and counter-drug activities. More recently, it was used to provide increased security at airports throughout the country in the aftermath of the September 11th terrorist attacks and to assist with security and disaster relief missions in the aftermath of Hurricanes Katrina and Rita.

For more information on the Posse Comitatus Act see CRS Report RS20590, *The Posse Comitatus Act & Related Matters: A Sketch*, by Jennifer Elsea.

8. What Type of Pay and Benefits Do Reservists Receive for Reserve Duty?

This section focuses primarily on the pay and benefits provided to participating members of the Selected Reserve when they are *not* serving on active duty. In general, when reservists are ordered to federal active duty for more than 30 days, or

²⁹ See 10 USC 331-335.

when mobilized for a contingency operation — such as operations Noble Eagle,³⁰ Enduring Freedom and Iraqi Freedom — they receive pay and benefits identical to those of active duty personnel, although there are some exceptions.³¹ When ordered to active duty in a non-contingency operation for a period of 30 days or less, they receive most, but not all, of the pay and benefits that active duty personnel receive.³² Additionally, reservists who are not on active duty receive a different set of pay and benefits when they are serving in a reserve component category other than the Selected Reserve,³³ and members of the National Guard receive a different set of pay and benefits when they are serving full-time in a state status.³⁴

Basic Pay. Members of the Selected Reserve are generally required to work one weekend a month (called inactive duty for training or IDT; also known colloquially as “weekend drill”) and two weeks per year (called annual training or AT; also known colloquially as “summer camp”). They are paid for this work according to the same basic pay table used for their active duty counterparts. This table is based on both rank and years of service. Thus, reservists and active duty personnel of the same rank and the same longevity fall into the same category for basic pay. However, reservists and active duty personnel do not always accrue credit for a day of pay in the same manner.

³⁰ Operation Noble Eagle qualifies if the reservist is brought onto active duty under 10 U.S.C. 12302. Members of the National Guard who were ordered to perform full-time National Guard duty in support of Operation Noble Eagle under 32 U.S.C. 502(f) also receive pay and benefits virtually identical to active duty personnel. However, members of the National Guard serving on state active duty (see question 11) receive pay and benefits according to the laws of their state or territory.

³¹ For example, one area in which benefits are not identical is re-enlistment bonuses. Reservists serving on active duty who are eligible for a re-enlistment bonus may receive a maximum bonus of \$20,000 (37 U.S.C. 308b), as opposed to a maximum bonus of \$90,000 for active duty re-enlistment bonuses (37 U.S.C. 308). However, the reserve bonus is provided to the individual in exchange for a continued reserve service, while the active duty bonus is provided in exchange for continued active duty service. Another example, which is beneficial to reservists, concerns certain types of compensation for health care officers (specifically, the special pay provided by 37 USC 302, 302a, 302b, 302c, 302e, and 303). While active component personnel must sign a written agreement to serve for at least one year in order to receive certain types of special compensation, 37 USC 302f waives this requirement for reserve officers on active duty under a call or order to active duty of more than 30 days but less than one year.

³² For example, they do not receive medical coverage for their families unless they have enrolled in the new premium-based Tricare insurance program established by the 108th and 109th Congress (see question 13), and they receive a housing allowance known as BAH-II, which is generally lower than the normal Basic Allowance for Housing (BAH).

³³ Members of the Selected Reserve receive the most generous package of pay and benefits, although Retired Reservists — whose retirement pay and benefits are deferred compensation for at least twenty years of active and/or reserve service — receive superior benefits in some respects. Members of the Individual Ready Reserve and the Standby Reserve are generally not paid and are eligible for only a few benefits.

³⁴ See questions 10-12.

During AT, reservists receive one day of basic pay for each day of duty, just as active duty personnel receive one day of basic pay for each day of duty. Thus, for a typical two week long AT, a reservist receives 14 days of pay. However, during IDT reservists receive one day of pay for each unit training assembly (UTA) they attend. A UTA is generally a four-hour period of instruction, and there are usually four UTAs per drill weekend. Thus, for each two-day long drill weekend reservists receive the equivalent of four days of basic pay. During a typical year then, a reservist might work 38 days (14 days of annual training plus 24 days of IDT) but receive the equivalent of 62 days worth of basic pay (14 days of pay for annual training and 48 days of pay for IDT).

Special and Incentive Pays. Depending on the type of duty they are performing, reservists may also be eligible for special and incentive pays, such as diving duty pay, hazardous duty pay, aviation career incentive pay, foreign language proficiency pay and others. Although there are some exceptions, reservists are generally eligible for special and incentive pays during AT under the same conditions as active component personnel are. Depending on the entitlement criteria, they may receive the full monthly amount of a given pay regardless of the number of days served, or they may receive a pro-rated portion of the full monthly amount corresponding to the number of days served. During IDT, reservists are generally eligible for special and incentive pays at a rate of 1/30th of the monthly rate for each IDT period.

Allowances. During AT, but not during IDT, reservists may be eligible for a housing allowance known as Basic Allowance for Housing II (BAH-II) and for a subsistence allowance known as Basic Allowance for Subsistence (BAS). Reserve officers are also entitled to a \$200 clothing allowance at the beginning of their reserve service to assist them in purchasing necessary uniform items. Furthermore, if they are called to active duty for more than 90 days, they are usually entitled to an additional \$100 clothing allowance. Reserve enlisted personnel are issued all of their uniforms, shoes, boots, and insignia and therefore do not receive any clothing allowance.

Medical Care. Until recently, non-activated reservists have had limited access to Tricare, the military health care system. Specifically, they were entitled to treatment at a military medical facility for illnesses or injuries incurred during IDT or while traveling to or from their IDT duty station. Additionally, during AT or any period of active duty, they were entitled to treatment at military medical facilities. Family members of reservists have generally not been entitled to military medical care during either IDT or AT, but became eligible if the reservist was ordered to active duty for more than 30 days. All of these provisions are still in effect today, but the 108th and 109th Congress passed several provisions which provide premium-based access to Tricare for non-activated reservists and their families. These provisions are discussed in more detail later in this report (see question 13).

Dental Care. Members of the Selected Reserve and Individual Ready Reserve are eligible to enroll in a dental plan known as the Tricare Dental Program (TDP), provided they have at least 12 months of service remaining. The annual premium for the program is about \$110 for a member of the Selected Reserve, and about \$280 for most members of the Individual Ready Reserve. In return, TDP provides up to

\$1,200 of coverage towards basic dental care procedures including diagnostic, preventive and some restorative services, as well as some oral surgery and emergency services. There is also a benefit for orthodontic services, which has a lifetime cap of \$1,500 per enrollee. Members of the Selected Reserve and Individual Ready Reserve may also enroll family members in the TDP, but doing so increases the annual premium by about \$700 per year.

Life Insurance. Members of the Selected Reserve are eligible to purchase up to \$400,000 of life insurance under the Servicemembers' Group Life Insurance (SGLI) program. The major benefits of this program are its relatively low cost and its guarantee of payment even if death occurs as a result of combat action. Reservists who participate in SGLI can also purchase up to \$100,000 of life insurance for their spouses and are provided with \$10,000 of life insurance coverage per child at no cost.

Exchange and Commissary Privileges. Members of the Selected Reserve have unlimited access to the commissary, a system of subsidized military supermarkets.³⁵ A family member with proper identification and paperwork may use the reservist's commissary privileges. Members of the Selected Reserve and their family members have unlimited access to the military exchange system, a system of military department stores.

Retirement. Members of the Selected Reserve become eligible for retirement after 20 years of qualifying service. A year of qualifying service is defined as a year in which a reservist has earned at least 50 "retirement points." Reservists earn 15 retirement points per year simply for being a member of the Selected Reserve, one point for each unit training assembly (UTA), one point for each day of annual training (AT), and one point for each day of active duty. Points can also be earned for completing certain military correspondence courses. Earning 50 points in a given year is usually not difficult for members of the Selected Reserve, as attending all weekend drills and two weeks of annual training will generate 77 retirement points.³⁶ However, excluding points earned while in an active duty status (which includes annual training), reservists may not earn more than 90 points per year.³⁷ Additionally, including points earned while in an active duty status, reservists may not earn more than 365 points in a year (366 in a leap year).

³⁵ Unlimited access to the commissary for members of the Selected Reserve and their family members was included in the FY2004 National Defense Authorization Act (P.L. 108-136, section 651). Prior to that, members of the Selected Reserve and their family members were limited to 24 visits per year.

³⁶ Fifteen points for "reserve membership," 48 points for attending 48 unit training assemblies during weekend drill, and 14 points for attending a two-week long Annual Training.

³⁷ The annual point "cap" has changed over time. Excluding points earned while in an active duty status, a reservists could not earn more than: 60 in any one year of service before the year of service that includes September 23, 1996; 75 in the year of service that includes September 23, 1996, and in any subsequent year of service before the year of service that includes October 30, 2000; 90 in the year of service that includes October 30, 2000 and subsequent years. See 10 USC 12733.

After completing 20 years of qualifying service, a reservist may apply for retirement. Upon retirement, *but before reaching age 60*, a reservist is entitled to a limited number of benefits, including unlimited use of the Exchange, commissary system, and other military facilities, and space available travel on military aircraft within the United States and its territories. Upon reaching age 60, the retired reservist is entitled to benefits identical to those of active duty retirees, including space available travel on military aircraft throughout the world, access to military medical care, and receipt of retired pay.

Retired pay is calculated by totaling all the points earned during all the years of service and then dividing this sum by 360. This calculation produces the number of “equivalent years” of active duty service the reservist has performed. The number of “equivalent years” is then multiplied by 2.5% to determine the “retirement benefit multiplier.” This multiplier is then applied to an amount based on the monthly base pay earned by an active duty service member with similar rank and years of service.³⁸

For example, a reservist who accrues 2,500 points over the course of 20 qualifying years would be deemed to have completed the equivalent of 6.94 years of active service (2,500 divided by 360). This figure, when multiplied by 2.5%, produces a multiplier of 17.3%. Assuming that the basic pay for an active duty service-member with similar rank and longevity was \$3,000 per month, the reservist would be entitled to retired pay in the amount of \$519 per month (17.3% of \$3,000).

A number of bills have been introduced in the 109th Congress to reduce the age for receipt of retired pay below 60. This issue is discussed in more detail later in this report. See question 13.

9. How Are Reservists Called to Active Duty by the Federal Government? How Often Does this Happen? After Activation, How Long Can They Be Required to Serve on Active Duty?

At present, there are three major statutory provisions by which reservists can be involuntarily ordered to active duty by the federal government for an extended period of time.³⁹ (For a discussion of additional ways in which members of the National Guard can be called up in a non-federal status, see question 11). These provisions differ from each other in terms of the statutory requirements for utilization, the number and type of reservists called up, and the duration of the call up. Depending on which of these provisions is utilized, a reserve mobilization is commonly referred

³⁸ For reservists who entered the military before September 8, 1980, the amount is the same as the base pay rate of an active duty service member with the same rank and years of service. For reservists who entered military service on or after that date, the amount is the average of the highest 36 months of basic pay he or she would have been entitled to on active duty.

³⁹ There is also a statutory provision, 10 U.S.C. 12301(b), which allows the Secretary of a military department to involuntarily order reservists to active duty “for not more than 15 days per year.”

to as either a Presidential Reserve Call-up (PRC), a Partial Mobilization, or a Full Mobilization. There is also a special provision for the recall of retired reservists. Each of these authorities is detailed below.

Presidential Reserve Call-up (PRC). Section 12304 of Title 10 U.S.C. permits the President to authorize the involuntarily activation of members of the Selected Reserve and the Individual Ready Reserve for a period not to exceed 270 days. Under this authority, up to 200,000 members of the Selected Reserve and the Individual Ready Reserve may serve on active duty at any one time, although no more than 30,000 of these reservists may be members of the Individual Ready Reserve. The President may activate reservists under this provision of law without approval from Congress; however, he is required to notify Congress within 24 hours of such an action. This authority has been used to mobilize reservists during the earlier part of the Persian Gulf War (1990-91), during the intervention in Haiti (1994-1996), during the Bosnian peacekeeping mission (1995-2004), during the low intensity conflict with Iraq⁴⁰ (1998-2003), and during the Kosovo conflict and peacekeeping mission (1999-present).

Partial Mobilization. In time of a national emergency declared by the President, or when otherwise authorized in law, section 12302 of Title 10 U.S.C. permits the Service Secretaries⁴¹ to authorize the involuntarily activation of members of the Ready Reserve under his or her jurisdiction for a period not to exceed 24 consecutive months. Up to 1 million members of the Ready Reserve may serve on active duty at any one time under this provision of law. Although reservists may be mobilized under this provision of law without approval from Congress, the Secretary of Defense is required to make an annual reports to the House and Senate Armed Service Committees on the policies and procedures used to implement this authority. This authority was used to mobilize reservists during the later part of the Persian Gulf War (1991) when the PRC authority was no longer sufficient to activate the number of reservists needed. President George W. Bush also invoked this authority in the aftermath of the September 11, 2001, terrorist attacks; this authority has been used

⁴⁰ See footnote 23.

⁴¹ Section 12302 of Title 10 U.S.C. states “In time of national emergency declared by the President...or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of that Secretary to active duty (other than for training) for not more than 24 consecutive months.” The “Secretary concerned,” as defined in 10 USC 101(a)(9), is the Secretary of the Army with respect to the Army, the Secretary of the Air Force with respect to the Air Force, the Secretary of the Navy with respect to the Navy, Marine Corps, and Coast Guard (when it is operating as part of the Department of the Navy), and the Secretary of Homeland Security with respect to the Coast Guard (when it is not operating as part of the Department of the Navy). Although the law assigns authority to mobilize reservists to an official designated by “the Secretary concerned,” the President, in his capacity as Commander in Chief, is ultimately responsible for the decision to order reservists to active duty.

to mobilize reservists for Operations Noble Eagle, Enduring Freedom and Iraqi Freedom.⁴²

Full Mobilization. In time of war or national emergency declared by Congress, or when otherwise authorized by law, section 12301(a) of Title 10 U.S.C. permits the Service Secretaries⁴³ to authorize the involuntary activation of any member of the reserve components under his or her jurisdiction. There is no limit on the number of reservists which may be ordered to active duty under this provision and mobilized reservists may be kept on active duty for the duration of the war or emergency plus six months.

Recall of Retired Reservists. Members of the Retired Reserve can be ordered to active duty in the case of a Full Mobilization (see previous paragraph). Under this authority, there is no limit on the number of retired reservists who can be called to active duty and they may be kept on active duty for the duration of the war or emergency plus six months. Additionally, the Secretary of each military department has the authority to order certain members of the Retired Reserve to active duty at any time, but this authority only applies to members of the Retired Reserve who have a regular retirement (at least 20 years of active duty) and there is a limit on the number of officers who can be recalled.⁴⁴ Members of the Retired Reserve who are recalled under this provision may not serve on active duty for more than 12 months within the 24 months following the first day in which the retiree is ordered to active duty.⁴⁵

⁴² DOD's general policy for the Partial Mobilization in support of these operations has been to keep reservists on active duty for no more than one year; and in the majority of cases to date, mobilized reservists have not been required to serve more than one year. However, the policy does allow the Service Secretaries to keep reservists on active duty for up to 24 cumulative months if they are needed to meet operational or other requirements. It should be noted that DOD's policy capping reserve service at 24 cumulative months is more restrictive than the 24 consecutive month cap specified in law. If DOD were to change its policy to mirror the law, reservists could be mobilized multiple times for tours of 24 consecutive months apiece.

⁴³ Section 12301(a) of Title 10 U.S.C. states "In time of war or of national emergency declared by the Congress, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, of a reserve component under the jurisdiction of that Secretary to active duty (other than for training) for the duration of the war or emergency and for six months thereafter." See footnote 41 for the definition of "Secretary concerned." While the law assigns authority to mobilize reservists to an official designated by "the Secretary concerned," the President, in his capacity as Commander in Chief, is ultimately responsible for the decision to order reservists to active duty.

⁴⁴ 10 USC 688 & 690.

⁴⁵ 10 USC 688(e).

10. What Type of Pay, Benefits, and Legal Protections Are Provided to Reservists Mobilized for Operations Noble Eagle, Enduring Freedom and Iraqi Freedom?

All reservists serving in Operations Enduring Freedom and Iraqi Freedom are serving in a federal status in support of a contingency operation. As such, they are entitled to pay, benefits, and legal protections which are virtually identical to those provided to active duty servicemembers. Specifically, they are entitled to basic pay at the same rate as active duty personnel and, if qualified, may receive special and incentive pays including Hazardous Duty Pay, Aviation Career Incentive Pay, Hostile Fire/Imminent Danger Pay, and special pays for health professionals. They are also entitled to a variety of allowances that are not taxable, including Basic Allowance for Housing (BAH), Basic Allowance for Subsistence (BAS), and, if separated from their families, a Family Separation Allowance (FSA). Medical and dental coverage for these reservists is identical to that provided to active duty servicemembers, and coverage for their family members is nearly identical.⁴⁶ Leave is accrued in the same manner as for active duty personnel. They also have the same access to legal assistance, child care centers, space available travel, and morale, welfare and recreation (MWR) services as active duty personnel have. Finally, they are protected by both the Uniformed Services Employment and Reemployment Rights Act and the Servicemembers' Civil Relief Act (see question 12).

The status of reservists serving in support of Operation Noble Eagle is more varied. Some have been called up in a strictly federal status and are, therefore, receiving pay, benefits and legal protections identical to those of reservists serving in support of Operation Enduring Freedom and Iraqi Freedom. Others have been called up in a purely state status, or in a state status with federal pay and benefits. They are receiving a different set of pay, benefits, and protections. For more information on these distinctions, see questions 10, 11 and 12.

11. Are There Other Ways in Which Members of the National Guard Can Be Activated?

Yes. Owing to the unique status of the National Guard as both a state and federal organization (see question 5), they can be called to active duty either in an exclusively federal status, in an exclusively state status, or in a state status with federal pay and benefits.

As members of the Reserve Component, National Guardsmen can be called to *federal* active duty in the same way as other reservists (see question 9). When this happens, control passes from the governor of the affected units and personnel to the President of the United States. When in federal service, Guard units and personnel typically perform military training or participate in military operations and they are

⁴⁶ The family members of reservists called to active duty in support of a contingency operation for 30 days or less are eligible to enroll in Tricare Standard (a fee-for-service plan) and Tricare Extra (a preferred provider health care option), but not Tricare Prime (a DoD "HMO").

entitled to the same pay, benefits, and legal protections as other reservists in federal service.⁴⁷

As members of the militia of their state or territory, National Guardsmen can also be called up by their governor for full-time duty. When employed in this capacity, referred to as state active duty, National Guardsmen are considered state or territorial employees, not federal employees, and their pay and benefits are determined by state or territorial law. They are not eligible for protection under the Servicemembers' Civil Relief Act or the Uniformed Services Employment and Reemployment Rights Act (see question 12), although they may be protected by analogous laws enacted at the state level. Typical missions performed under state active duty include responding to disasters and civil disorders. More recently, a number of governors have called up members of the National Guard to protect critical infrastructure in their states, such as nuclear power plants, water treatment facilities, and bridges, from potential terrorist attacks.

A third form of duty for National Guardsmen involves duty under state authority but with pay and benefits provided by the federal government. Typical duties performed in this status include inactive duty for training (IDT or "weekend drill") and annual training (AT) within the United States. Another type of duty which falls in this category is specified in Title 32 of the U.S. Code, Section 502(f). This provision of law provides that "a member of the National Guard may...without his consent, but with the pay and allowances provided by law...be ordered to perform training or other duty in addition to [IDT or AT]." This is the provision of law which was used to provide federal funding to the states when they called up Guardsmen to provide security at many of the nation's airports in the aftermath of the terrorist attacks of September 11, 2001, and in the aftermath of Hurricanes Katrina and Rita in 2005. Guardsmen called up under this authority receive federal pay and benefits, and are entitled to certain legal protections⁴⁸ as though they were in federal service, but they are otherwise considered to be in a state duty status.

⁴⁷ When they are ordered to federal active duty for more than 30 days, or when mobilized for a contingency operation such as Operation Enduring Freedom, reservists receive benefits nearly identical to service members on active duty. When ordered to active duty in a non-contingency operation for a period of 30 days or less, they receive most, but not all, of the benefits which active duty personnel receive. (See question 8 and 10 for more information on these topics).

⁴⁸ Specifically, they are entitled to protection under the Uniformed Services Employment and Reemployment Rights Act (USERRA), but are generally not covered by the Servicemembers' Civil Relief Act (SCRA). SCRA does cover members of the National Guard for "service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under Section 502(f) of Title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds" (P.L. 108-189, Sec. 101(2)(A)(ii), codified at 50 U.S.C. App. 511). Those not covered by the SCRA may, however, receive civil liability protection from state or territorial laws.

12. What Type of Legal Protections Do Reservists Have When They Are Serving on Active Duty? What Re-employment Rights Do Reservists Have after Being Released from Active Duty?

When they are called into active federal service, reservists become eligible for a broad array of legal protections. Many of these protections are contained in the recently passed Servicemembers' Civil Relief Act (SCRA, P.L. 108-189), which amended and renamed the Soldiers' and Sailors' Civil Relief Act (SSCRA) of 1940.⁴⁹ (Note, however, that National Guardsmen who are serving in a state status are not covered by the SCRA. National Guardsmen performing full time National Guard duty under Title 32 of the U.S. Code are generally not covered by the SCRA, but are covered in certain circumstances).⁵⁰ Among other things, the SCRA provides most people called to active duty with certain protections against rental property evictions, mortgage foreclosures, insurance cancellations, and government property seizures to pay tax bills. With the exception of federally guaranteed student loans, it also limits the amount of interest that the activated service member has to pay on loans incurred prior to activation to 6%.⁵¹ For a full description of the legal protections provided to activated reservists by the SCRA, see CRS Report RL32360, *The Servicemembers' Civil Relief Act (P. L. 108-189)*, by Estella I. Velez Pollack.

Reservists' employment and re-employment rights are covered under the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994.⁵² USERRA prohibits employers from discriminating against reservists — including members of the National Guard serving under Title 32 of the U.S. Code, but not those performing state active duty (see question 12) — with respect to hiring, retention, promotion, or other benefits and requires employers to give these individuals time off for military service, regardless of whether the service is voluntary or involuntary.⁵³ This time off is treated as a furlough or leave of

⁴⁹ 50 USC App. 501 et. seq.

⁵⁰ See footnote 48. See questions 5 and 11 for more information on non-federal status for National Guardsmen.

⁵¹ The interest rate provision does not apply to federally guaranteed student loans due to a separate provision in the statutes that govern the Federal Family Education Loan Program. Specifically, 20 U.S.C. 1078(d) states that “No provision of any law of the United States (other than this chapter) or of any State (other than a statute applicable principally to such State’s student loan insurance program) which limits the rate or amount of interest payable on loans shall apply to a loan - (1) which bears interest (exclusive of any premium for insurance) on the unpaid principal balance at a rate not in excess of the rate specified in this part; and (2) which is insured (i) by the United States under this part, or (ii) by a guaranty agency under a program covered by an agreement made pursuant to subsection (b) of this section.”

⁵² 38 USC Chapter 43. USERRA protects not only reservists, but all those who choose to serve in the active component military for less than 5 years.

⁵³ 38 USC 4311(a)

absence,⁵⁴ and the reservist may not be required to use vacation leave, annual leave, or similar leave.⁵⁵ Upon the completion of such military service, USERRA generally gives the reservist a right to re-employment.⁵⁶

Although there are some exceptions to this policy, a reservist is usually entitled to be promptly re-employed by his or her civilian employer and, depending on certain factors, to be reinstated to either (1) the job that the person would have held if the reservist's employment had not been interrupted by military service, (2) the job which the reservist actually held at the time military service began, or (3) a job comparable to the one the reservist held at the time military service began. A comparable job is one of similar pay, status, and seniority that the reservist is qualified to perform.

Finally, upon reinstatement, the reservist is entitled not only to the seniority and seniority-based benefits he or she held at the time military service began but also to any additional seniority and seniority-based benefits that the reservist *would have earned* if he or she had remained continuously employed.⁵⁷ For example, suppose a reservist has nine years of seniority with his or her civilian employer and then leaves to perform two years of military service. Upon returning to work at the end of that two year period, the reservist will be considered to have 11 years of seniority with the civilian employer, and all the rights and benefits that go with that. USERRA also provides certain protection to reservists with respect to job retraining, employer provided health care plans, and employer provided pension plans.⁵⁸

Reservists do have an obligation to notify their employer as soon as possible about upcoming military service. They also have an obligation to report to work, or to notify their employers that they intend to report to work, within a relatively short time after being released from active duty. Failure to meet these obligations may effectively nullify a reservist's right to re-employment.⁵⁹

Reservists who believe their civilian employer has violated their rights under USERRA have several options. The first is to contact their commanding officer, who may be able to resolve the issue with the employer. Alternatively, reservists may contact the National Committee for Employer Support of the Guard and Reserve (NCESGR), a Department of Defense organization which will contact the employer and attempt to resolve the problem informally. Finally, a complaint can be made to

⁵⁴ 38 USC 4316 (b)(A).

⁵⁵ 38 USC 4316(d). Reservists may, however, choose to use their vacation leave, annual leave, or similar leave while they are performing military service. Some reservists choose to do this so that they can continue to receive pay from their civilian employer while away on military duty.

⁵⁶ 38 USC 4312.

⁵⁷ 38 USC 4316.

⁵⁸ 38 USC 4313, 4317, 4318

⁵⁹ 38 USC 4312 (e).

the Veterans' Employment and Training Service (VETS) of the Department of Labor. VETS has the legal authority to enforce USERRA if an employer has violated it.

13. Has Congress Made Any Recent Changes in Pay and Benefits for Reserve Component Personnel?

Yes. Both the 108th and 109th Congress made a number of significant changes in Reserve Component pay and benefits. The most significant of those changes are: (1) establishing premium-based access to TRICARE Standard for non-activated reservists, (2) creating a new educational benefit for reservists who have been mobilized since September 11, 2001, (3) providing an additional payment of up to \$3,000 per month for certain reservists who experience a reduction in income when activated, and (4) lowering from 140 days to 31 days the threshold of eligibility for full BAH for those reservists called to active duty for a reason other than a contingency operation. Each of these changes is discussed below.

Premium-based Access to Tricare for Non-Activated Reservists and their Families. When reservists are ordered to federal active duty for more than 30 days, or when mobilized for a contingency operation — such as operations Noble Eagle, Enduring Freedom and Iraqi Freedom — members of the National Guard and Reserves are entitled to receive medical benefits under Tricare (the military's health care system) for themselves and their family members. However, up until quite recently, non-activated reservists had limited access to Tricare for themselves and no access for their families. This began to change in 108th and 109th Congress, both of which passed provisions expanding access to Tricare for non-activated reservists and their families.

The 108th Congress passed legislation allowing certain members of the Selected Reserve and their family members to receive coverage under the Tricare Standard option.⁶⁰ To be eligible, the reservist must have served on active duty in support of a contingency operation since September 11, 2001, and must sign an agreement to continue serving in the Selected Reserve. The duration of eligibility was set at a maximum of one year for each 90 days of service, or for the duration of the service agreement, whichever was shorter. Additionally, the reservist would have to pay a premium, set at 28% of the amount which the Secretary of Defense determines to be actuarially reasonable. In 2006, the rates for coverage under this system, called Tricare Reserve Select (TRS), were \$81 per month for the TRS-eligible member only, and \$253 per month for the TRS-eligible member and family members.⁶¹

⁶⁰ National Defense Authorization Act for FY2005, P.L. 108-375, section 701.

⁶¹ For more information on TRS, see DoD's fact sheet on the program, available at [<http://www.tricare.osd.mil/Factsheets/viewfactsheet.cfm?id=326>]

The 109th Congress enhanced the original TRS program⁶² and established two new “tiers.”⁶³ These new tiers effectively extend access to Tricare to all members of the Selected Reserve and their family members. The first new tier provides coverage under the Tricare Standard option to members of the Selected Reserve who commit to one year of continued service in the Selected Reserve and who are either (a) “eligible unemployment compensation recipients,” (b) ineligible for health care benefits under an employer sponsored health benefits plan, or (c) self-employed. These reservists will have to pay a premium, set at 50% of the amount which the Secretary of Defense determines to be actuarially reasonable. Rates for coverage in this tier are estimated to be about \$145 per month for the reservist only and about \$452 per month for the reservist and family members for 2006; however, this program has not yet been implemented.

The second new tier provides coverage under the Tricare Standard option to those members of the Selected Reserve who do not qualify under TRS or the unemployed/uninsured tier mentioned above — in other words, it covers those reservists who do have employer provided health insurance and who do not have qualifying contingency operation service — and who commit to one year of continued service in the Selected Reserve. These reservists will have to pay a premium, set at 85% of the amount which the Secretary of Defense determines to be actuarially reasonable. Rates for coverage in this tier are estimated to be about \$246 per month for the reservist only and about \$768 per month for the reservist and family members for 2006; however, this program has not yet been implemented.

The statute requires the Secretary of Defense to provide coverage for the two new tiers of beneficiaries no later than October 1, 2006.

New Educational Benefit for Activated Reservists. The 108th Congress passed legislation which provides enhanced “GI Bill” type educational benefits for reservists who have served in support of a contingency operation since September 11, 2001. Prior to passage of this law, there were two main educational assistance programs for currently serving military personnel: the Montgomery G.I. Bill Active Duty⁶⁴ (MGIB-AD) and the Montgomery G.I. Bill Selected Reserve⁶⁵ (MGIB-SR). Eligibility for the basic MGIB-AD benefit typically requires three years of continuous

⁶² P.L. 109-163, National Defense Authorization Act for FY2006, section 701, January 6, 2006. The enhancements would allow “eligible members of the Selected Reserve to consecutively complete earned periods of TRICARE coverage; allow a member of the Individual Ready Reserve to retain eligibility for coverage for 1 year while finding a position in the Selected Reserve; authorize 6 months of extended health care coverage for family members following the death of a reserve member; and allow 90 days after release from active duty for an eligible member of the Selected Reserve to elect participation in TRICARE Reserve Select.” H.Rept. 109-360, *Conference Report to Accompany H.R. 1815*, December 18, 2005, p. 741.

⁶³ P.L. 109-163, National Defense Authorization Act for FY2006, section 702, January 6, 2006.

⁶⁴ Title 32, Chapter 30, United States Code.

⁶⁵ Title 10, Chapter 1606, United States Code.

active duty service and a \$1,200 deduction from the servicemembers pay.⁶⁶ The basic benefit for full-time study provided by this program is \$1,034 per month, as of October 1, 2005, for up to 36 months. Eligibility for the MGIB-SR benefit requires a six year commitment to serve in the Selected Reserve, but requires no contributions on the part of the reservist. The educational benefit for full-time study provided by this program is \$297 per month, as of October 1, 2005, for up to 36 months. Although the MGIB-SR program requires no contribution (as the MGIB-AD program does), the monthly payments under MGIB-AD are about three and a half times greater than those made under MGIB-SR.

While reservists who served on active duty for at least 24 consecutive months were eligible for the reduced MGIB-AD benefit (provided they contributed \$1,200 like their active duty peers), those reservists who served less than 24 consecutive months remained eligible only for the MGIB-SR until recently. In 2004, Congress established a new program to provide enhanced educational benefits to reservists who were “called or ordered to active service in response to a war or national emergency declared by the President or the Congress, in recognition of the sacrifices that those members make in answering the call to duty.”⁶⁷

Under this new program, called the Reserve Educational Assistance Program (REAP) by the Department of Veterans’ Affairs, eligible reservists⁶⁸ will receive the following educational benefit for full time study for up to 36 months: 40% of the MGIB-AD basic benefit for those serving 90 consecutive days but less than one consecutive year; 60% of the MGIB-AD basic benefit for those serving one consecutive year but less than two consecutive years; and 80% of the MGIB-AD basic benefit for those serving two consecutive years or more. As of October 1, 2005, the 40% benefit equates to \$413.60 per month, the 60% benefit equates to \$620.40 per month, and the 80% benefit equates to \$827.20 per month. REAP does not require any contribution on the part of reservists like the MGIB-AD program does; however, eligibility continues only so long as the individual remains in

⁶⁶ A reduced benefit amount of \$840 per month — as of October 1, 2005 — is also available for certain individuals who serve at least 2 years of active duty; they are also required to contribute \$1,200 to become eligible for the program.

⁶⁷ P.L. 108-375, Ronald W. Reagan National Defense Authorization Act for FY2005, section 527, October 28, 2004.

⁶⁸ The eligibility requirements specified in the statute are as follows:

“(a) **ELIGIBILITY** — On or after September 11, 2001, a member of a reserve component is entitled to educational assistance under this chapter if the member — (1) served on active duty in support of a contingency operation for 90 consecutive days or more; or (2) in the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performed full time National Guard duty under section 502(f) of title 32 for 90 consecutive days or more when authorized by the President or Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

(b) **DISABLED MEMBERS.** — Notwithstanding the eligibility requirements in subsection (a), a member who was ordered to active service as prescribed under subsection (a)(1) or (a)(2) but is released from duty before completing 90 consecutive days because of an injury, illness or disease incurred or aggravated in the line of duty shall be entitled to educational assistance under this chapter at the rate prescribed in section 16162(c)(4)(A) of this title.”

Selected Reserve, for those activated while serving in the Selected Reserve, or the Individual Ready Reserve/Inactive National Guard, for those activated while serving in the Individual Ready Reserve/Inactive National Guard.⁶⁹

Financial Losses for Some Mobilized Reservists. The mobilization of reservists in the aftermath of the September 11, 2001, terrorist attacks has been the largest since the Korean War. Some of these reservists have experienced financial losses when moving from their civilian jobs to full time military status. These losses occur due to differences between the reservists' military and civilian pay, expenses incurred by reservists because of mobilization, and the decline in business experienced by self-employed reservists during and after release from active duty. This has generated numerous complaints from mobilized reservists and helped generate congressional interest in the subject.

Congress recently enacted a provision that would provide a special payment of up to \$3,000 to certain reservists who experience income loss while mobilized.⁷⁰ Reservists who have experienced income loss become eligible for these payments in any full month of active duty *following the month in which they complete* (a) 18 consecutive months of active duty under an involuntary mobilization order, (b) 24 months of active duty under an involuntary mobilization order out of the previous 60 months, or (c) are involuntarily mobilized for a period of 180 days or more within six months or less of a previous period of involuntary active duty for a period of 180 days or more. The amount of compensation available under this provision will be equal to the reservist's "average monthly civilian income" minus "total monthly military compensation."⁷¹ However, the amount may not be less than \$50 per month or more than \$3,000 per month.

⁶⁹ An exception to this requirement is made for those who are involuntarily separated from the Selected Reserve, Individual Ready Reserve or Inactive National Guard on account of disability. They have 10 years to use the benefit.

⁷⁰ P.L. 109-163, National Defense Authorization Act for FY2006, section 614, January 6, 2006.

⁷¹ The term "average monthly civilian income" means "the amount, determined by the Secretary concerned, of the earned income of the member for either the 12 months preceding the member's mobilization or the 12 months covered by the member's most recent Federal income tax filing, divided by 12." The term "total monthly military compensation" means "the amount, computed on a monthly basis, of the sum of — (A) the amount of regular military compensation (RMC); and (B) any amount of special pay or incentive pay and any allowance (other than an allowance included in regular military compensation) that is paid to the member on a monthly basis." Regular military compensation (RMC) is defined in 37 USC 101(25) as "the total of the following elements that a member of a uniformed service accrues or receives, directly or indirectly, in cash or in kind every payday: basic pay, basic allowance for housing, basic allowance for subsistence, and Federal tax advantage accruing to the aforementioned allowances because they are not subject to Federal income tax."

Full Basic Allowance for Housing (BAH) for Reservists Serving on Active Duty for Over 30 Days.

Up until recently, reservists who were serving on active duty in support of a contingency operation received full BAH (if they were otherwise eligible for it), but reservists serving on active duty for other purposes could only receive full BAH if their orders were for at least 140 days. If their orders were for fewer than 140 days they could only receive an allowance known as BAH-II, which was generally lower than BAH. Congress recently enacted legislation which effectively lowered the threshold for receipt of BAH from 140 days to 31 days of duty, although reservists on active duty in support of a contingency operation would continue to receive BAH regardless of the length of their duty.⁷²

14. Which Reserve Component Personnel Issues Might Be of Particular Interest to the 109th Congress? What Proposals Have Been Made to Address These Issues?

Lowering the Age for Reservists to Receive Full Retirement Benefits.

After completing 20 years of qualifying service, a reservist may apply for retirement. Upon retirement, the reservist is entitled to receive certain benefits immediately; however, he or she is not entitled to full benefits until the age of 60. The most valuable benefits that a retired reservist receives at age 60 are retired pay and low-cost access to Tricare, the military health care system.⁷³ A number of proposals have been introduced in the 109th Congress which would lower the age at which reservists are entitled to retired pay (and, consequently, low-cost access to Tricare). Some proposals would universally lower this age to 55, some would create a sliding scale to lower the age (based, for example, on the individual retiree's years of service), and some would abolish the age requirement altogether.

Supporters of reducing the age at which retired reservists can draw retired pay argue that, in an era when reservists are being used extensively, reserve benefits should be improved and should more closely approximate active duty benefits. Active duty retirees, they note, are eligible to draw retired pay immediately upon retirement, regardless of age.⁷⁴ Additionally, they argue that an improved retirement

⁷² P.L. 109-163, National Defense Authorization Act for FY2006, section 610, January 6, 2006.

⁷³ Retiree access to military health care is tied to retired pay in law. 10 U.S.C. 1074(b) states "...a member or former member of the uniformed services *who is entitled to retired or retainer pay*, or equivalent pay, may, upon request, be given medical and dental care in any facility of any uniformed service, subject to the availability of space and facilities and the capabilities of the medical and dental staff."

⁷⁴ Note, however, that the active duty retirement system and the reserve retirement system were established for different reasons. As noted by the Government Accountability Office, "The active duty retirement system, which was created in the mid-1800s, was originally (continued...)"

benefit would improve recruiting and retention in the Reserve Components. A more robust retirement benefit, they claim, would help keep the Reserve Components strong in a time of unusual stress.

Critics of reducing the age at which retired reservists can draw retired pay point out that, although reservists are being used more extensively today than they have been in many decades, they are still not identical to active duty personnel in terms of their service: a reservist may well be mobilized for several years of active duty over the course of a 20 year career, but an active component retiree must serve all 20 years on active duty. Additionally, they argue that retirement benefits are not as useful for enhancing recruiting and retention as other incentives, such as bonuses, and note that the people who would benefit most immediately from such a policy change would likely not be the reservists serving in Iraq and Afghanistan right now, but reservists in their 50s who are already retired. They have also raised concerns about cost⁷⁵ and the potential impact on active and reserve component force structure.⁷⁶

The Senate version of the National Defense Authorization Act for FY2006 included a provision (section 539) that would have reduced the age at which eligible reservists could draw retired pay by three months for each 90 days of active duty which was performed after September 11, 2001 and which was performed either in support of a contingency operation or while on orders under 32 USC 502(f) for the purpose of responding to a national emergency declared by the President and supported by federal funds. The earliest age at which retired pay could be drawn

⁷⁴ (...continued)

intended to provide for the separation of older officers with over 40 years of service to obtain a youthful and vigorous officer force, and improve promotion opportunities for younger officers...In contrast, the purpose of the reserve retirement system was to improve retention, as opposed to encouraging attrition, by providing a financial incentive for qualified personnel to maintain their reserve affiliation and continue training in the reserves.” Government Accountability Office, *DOD Needs More Data Before It Can Determine if Costly Changes to the Reserve Retirement System Are Warranted*, September, 2004, p. 13.

⁷⁵ The Department of Defense claims “the Department’s estimated cost to lower the age requirement to 55 would be \$600M in the first year and nearly \$6.6B over the next ten years. In addition, outlays from the United States Treasury are projected to be \$1.4B in the first year with total outlays for the first 10 years projected to reach \$14B. The increased cost to the Defense Health Program because of the additional eligible beneficiaries is projected to be \$300M in the first years, with the 10-year cost reaching nearly \$4B.” Department of Defense, *Department of Defense Report to Congress: Reserve Personnel Compensation Program Review*, March 15, 2004, p. 43. The Government Accountability Office estimates that lowering the retirement age to 55 would cost DOD an additional \$13.63 billion over the next ten years to cover the additional retired pay and health care costs. Government Accountability Office, *DOD Needs More Data Before It Can Determine if Costly Changes to the Reserve Retirement System Are Warranted*, September, 2004, p. 28.

⁷⁶ Specifically, there is a concern that lowering the retirement age could alter retention patterns within the Reserve and Active Components. For example, it might alter the balance between various ranks within the Reserve Components, or that it might induce Active Component personnel to transfer to the Reserve Component rather than remaining on active duty.

under this provision was 50, and eligibility for retiree medical benefits would remain at 60 regardless of when the individual became eligible for retired pay. However, this provision was dropped by the conference committee, which indicated its interest in “a reserve retirement system that enhances mobilization readiness, supports recruiting and retention, and equitably rewards those who serve on active duty for extended periods, particularly volunteers,” but noted that the recently established Commission on the National Guard and Reserves is expected to review “issues relating to the eligibility age for receipt of retired pay” and recommend alternatives in the near future.