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Operations Enduring Freedom and Noble Eagle: Questions and Answers About U.S. Military Personnel, Compensation, and Force Structure

Updated March 19, 2002

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Summary

This report provides short answers to commonly asked questions about military personnel, compensation, and force structure issues related to Operation Enduring Freedom (OEF), the ongoing war against terrorism, and Operation Noble Eagle (ONE), the name given to military operations related to homeland security and support to federal, state, and local agencies in the wake of the September 11th attacks.

The section on personnel addresses issues such as casualties, reserve mobilization, “sole surviving son or daughter” status, conscientious objection, and “stop-loss.” The section on compensation addresses issues related to the pay and benefits – including death benefits – provided to members of the U.S. military participating in OEF/ONE and their families. The section on force structure addresses issues related to how OEF/ONE might affect the number and type of personnel needed by the military, and answers common questions about whether or not a return to conscription is likely under current circumstances.

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Operations Enduring Freedom and Noble Eagle: Questions and Answers About U.S. Military Personnel, Compensation, and Force Structure

The U.S. military response to the September 11th attacks on the World Trade Center and the Pentagon includes both Operation Enduring Freedom (OEF) and Operation Noble Eagle (ONE). Operation Enduring Freedom refers to operations related to the war against terrorism.¹ Operation Noble Eagle refers to operations related to homeland security² and support to federal, state, and local agencies.³ This report provides short answers to commonly asked questions about military personnel and compensation issues related to these two operations.

The questions are grouped into three major thematic areas: personnel, compensation, and force structure. The section on personnel addresses issues such as casualties, reserve mobilization, “sole surviving” son or daughter status, conscientious objection, and “stop-loss.” The section on compensation addresses issues related to the pay and benefits – including death benefits – provided to members of the U.S. military participating in OEF/ONE and their families. The section on force structure addresses issues related to how OEF/ONE might affect the number and type of personnel needed by the military, and answers common questions about whether or not a return to conscription is likely under current circumstances.

Personnel

How many U.S. military personnel are participating in Operation Enduring Freedom (OEF) and where are they located?

Due to the operational security practices of the Department of Defense, precise information about the number and location of military personnel participating directly in OEF – especially those operating in Afghanistan and surrounding areas – is unavailable. Additionally, it is difficult to make estimates of the numbers involved due to the global reach of U.S. military power, which blurs the lines between those who

¹For example, the conflict in Afghanistan and training assistance to foreign militaries who are conducting operations against terrorists.

²For example, air patrols over U.S. cities.

³For example, various types of disaster assistance provided at the sites of the terrorist attacks.

are directly participating in OEF, those who are supporting OEF, and those whose duties are largely unrelated to OEF.

However, in October of 2001, the Bush administration did indicate that there were about 50,000 U.S. military personnel operating in the vicinity of Afghanistan.⁴ About half of these personnel were serving aboard naval vessels in the Northern Arabian sea; the rest were operating from locations in Afghanistan, Uzbekistan, Kyrgyzstan, Pakistan, Saudi Arabia, Bahrain, the United Arab Emirates, Oman, and Diego Garcia. More recent reports estimate that of these personnel, about 5,000 are deployed on the ground in Afghanistan. Additionally, about 650 U.S. troops deployed to the Philippines in January of 2002 to train that country's military, which is currently conducting operations against the Abu Sayyaf terrorist group. Recent reports also indicate that small deployments of about 100-200 personnel are underway to both Yemen and Georgia (the former Soviet republic). The stated purpose of these deployments is to provide counter-terrorist training to the armed forces of those countries.

Updates on the number and locations of military personnel involved in OEF are included in the *CRS Electronic Briefing Book on Terrorism* under the heading "Military Force Structure" and "Military Responses."⁵

How many U.S. military personnel have died in connection with OEF? Are any servicemembers who are missing in action (MIA) or prisoners of war (POW)?

As of March 18, 2002, there were 27 fatalities among U.S. military personnel serving in OEF. Additionally, one CIA officer was killed during a prison riot in northern Afghanistan. At present, no U.S. military personnel are classified as MIA or POW. Updates on the number of U.S. military fatalities is included in the *CRS Electronic Briefing Book on Terrorism* under the heading "Casualties/Fatalities."⁶

How many reservists have been called to active duty by the federal government? After activation, how long can they be required to serve on active duty?

As of March 12, 2002, a total of 73,169 members of the Reserve Component (which includes the National Guard) had been involuntarily called to active duty under *federal* orders for Operation Enduring Freedom or Operation Noble Eagle. These individuals were called to active duty under a mobilization authority known as Partial Mobilization. In time of a national emergency declared by the President, Partial

⁴White House Fact Sheet, Operation Enduring Freedom, 10/1/01, cited by Michael R. Gordon in "A Month in a Difficult Battlefield: Assessing U.S. War Strategy," *New York Times*, November 8, 2001, p. A1.

⁵"Military Force Structures" available at [<http://www.congress.gov/brbk/html/ebter188.html>]
"Military Responses" available at [<http://www.congress.gov/brbk/html/ebter80.html>]

⁶"Casualties/Fatalities" available at [<http://www.congress.gov/brbk/html/ebter184.html>]

Mobilization authorizes the President⁷ to involuntarily order members of the Ready Reserve to active duty 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 the President may declare a national emergency and mobilize reservists under this provision of law without approval from Congress, he is required to make regular reports to Congress justifying the mobilization of any activated units and identifying their mission and location. This authority was also used to mobilize reservists during the later part of the Persian Gulf War (1991).

Some reservists mobilized in the immediate aftermath of the attacks received orders stating they have been ordered to active duty for up to 24 months. This was within the authority of the law. However, this does not mean that the affected reservists will *definitely* be kept on active duty for two years. Indeed, based on a DOD policy memorandum issued shortly after the attacks, it appears likely that these orders will eventually be amended to specify a duration of no more than 12 months. However, under the same DOD policy memorandum, each Service Secretary has the discretion to keep reservists on active duty for the full 24 months if they are needed to meet operational or other requirements.⁸

It should also be pointed out that some members of the National Guard have been called up to perform duties related to ONE in a *non-federal status*. On March 12, 2002, a total of 1,522 members of the National Guard were on state active duty at the order of their respective governors, and 7,125 members of the National Guard were on duty at the order of their respective governors under Title 32 of the U.S. Code (which means they are under state control, but with federal pay and benefits). These distinctions are important as they have a significant bearing on the type of pay, benefits, and legal protections to which the affected individuals are entitled. For more information on this topic, see CRS Report RL30802, *Reserve Component Personnel Issues*, updated February 24, 2002, by Lawrence Kapp.

⁷Section 12302 of Title 10 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.” 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.

⁸The memorandum states “No member of the Reserve component called to involuntary active duty under 10 U.S.C. 12302 in response to the World Trade Center and Pentagon Attacks, shall serve on active duty in excess of 24 months under that authority...Service Secretaries concerned may release individuals early (prior to the completion of the period of service for which ordered) based on operational requirements. As a matter of policy, the period of active duty specified for Ready Reserve members in initial orders to active duty under 10 U.S.C. 12302 shall not exceed 12 months. This period may be extended up to an additional 12 months at the discretion of the Service Secretary based on operational requirements or other needs.” Memorandum from David S. Chu, Under Secretary of Defense for Personnel and Readiness, “Mobilization/Demobilization Personnel and Pay Policy for Reserve Component Members Ordered to Active Duty in Response to World Trade Center and Pentagon Attacks,” dated September 20, 2001.

What policies govern the deployment of “sole surviving” sons and daughters?

No statute governs the deployment of “sole surviving” sons and daughters in today’s all-volunteer military.⁹ However, the Department of Defense does have an administrative policy governing assignments of a “sole surviving” son or daughter.¹⁰ This policy allows “sole surviving” sons or daughters to apply for a protective assignment status which, once approved, prohibits his or her assignment “to any overseas area designated as a hostile-fire or imminent-danger area...nor to duties that regularly might subject him or her to combat with the enemy.”¹¹ In addition to protective assignment, enlisted personnel who become sole surviving sons or daughters after having entered service may also apply for and be granted a discharge in most circumstances.¹²

However, it is important to point out that the term “sole surviving son or daughter” does not simply mean the only child in a family. According to DOD’s definition, a sole surviving son or daughter is the only remaining son or daughter in a family where the father,¹³ or one or more sons or daughters, served in the Armed Forces of the United States and, because of hazards with such military service, either (1) was killed, (2) died as a result of wounds, accident or disease, (3) is in a captured or missing-in-action (MIA) status, or (4) is permanently 100-percent disabled, is

⁹However, there is a law which prohibits the *conscriptio*n of “surviving sons” – not necessarily *sole* surviving sons – in certain circumstances. Conscriptio, also known as the draft, is governed by the Military Selective Service Act, located at 50 USC Appendix 451 to 471. Part of this law, 50 USC Appendix 456 (o), states: “Except during the period of a war or a national emergency declared by Congress, no person may be inducted for training and service under this title (sections 451 to 471a of this Appendix) unless he volunteers for such induction (1) if the father or the mother or a brother or a sister of such person was killed in action or died in line of duty while serving in the Armed Forces after December 31, 1959, or died subsequent to such date as a result of injuries received or disease incurred in line of duty during such service, or (2) during any period of time in which the father or the mother or a brother or a sister of such person is in a captured or missing status as a result of such service. As used in this subsection, the term ‘brother’ or ‘sister’ means a brother of the whole blood or a sister of the whole blood, as the case may be.” Note, however, that the legal authority to induct men into the military, which is contained in the Military Selective Service Act, expired on July 1, 1973. Therefore, this provision of law is not currently relevant.

¹⁰Department of Defense Directive 1315.7, *Military Personnel Assignments*, paragraph 5.10.

¹¹Department of Defense Directive 1315.7, *Military Personnel Assignments*, paragraph 5.10.1.

¹²Department of Defense Directive 1315.15, *Special Separation Policies for Survivorship*, paragraph 4. This policy does not apply during periods of war or national emergency declared by Congress, if the individual has court-martial charges pending, if the individual is being processed for involuntary separation for cause, or if the individual voluntarily enlists, reenlists, or voluntarily extends his or her term of active duty after being notified of the family casualty on which the survivorship claim is made.

¹³The definition in DOD Directive 1315.7 does not include the term “mother,” but this appears to be an oversight, as the other DOD Directive dealing with the issue of sole surviving sons and daughters, DOD Directive 1315.15, does include the term mother.

hospitalized on a continuing basis, and is not employed gainfully because of such disability.¹⁴

The “sole surviving” son or daughter issue is different from the commonly cited, albeit fictional, “Sullivan Act” or “Sullivan Law.” The Sullivans were five brothers serving on board a single U.S. Navy ship (the *U.S.S. Juneau*) during World War II. Their ship was sunk by the Japanese on November 13, 1942, and all of the brothers died. In response to this tragedy, some proposals were made to prohibit brothers from serving together on the same ship, but Congress did not pass any such law, nor did the President issue an executive order to that effect. In response to a similar tragedy which occurred the previous year (three brothers serving aboard the *U.S.S. Arizona* perished during the Pearl Harbor attacks) the Navy did issue a policy forbidding commanding officers from approving requests from brothers to serve together, but the policy was apparently not enforced and did not prohibit the Navy from assigning brothers to the same ship.¹⁵

Current DOD policy states that “concurrent assigning of service members of the immediate family to the same military unit or ship is not prohibited, but requests for reassignment to a different unit of ship may be approved for all but one service member.” Approval of such requests, however, are contingent upon the needs of the military.¹⁶

What policies govern the status of conscientious objectors?

No statute governs the treatment of conscientious objectors currently serving in the military.¹⁷ However, the Department of Defense does have an administrative

¹⁴Department of Defense Directive 1315.7, *Military Personnel Assignments*, Enclosure 2, paragraph E2.1.39.

¹⁵Department of the Navy, Naval Historical Center, *Frequently Asked Questions: Sullivan Brothers*, located at [<http://www.history.navy.mil/faqs/faq72-1.htm>.]

¹⁶Department of Defense Directive 1315.7, *Military Personnel Assignments*, paragraph 4.9.

¹⁷However, there is a law which deals with the treatment of conscientious objectors during a draft. The draft, is governed by the Military Selective Service Act, codified in 50 USC Appendix 451 to 471. Part of this law, 50 USC Appendix 456(j), states: “Nothing contained in this title (sections 451 to 471a of this Appendix) shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. As used in this subsection, the term ‘religious training and belief’ does not include essentially political, sociological, or philosophical views, or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title (said sections), be assigned to noncombatant service... or shall, if he is found to be conscientiously opposed to participation in such noncombatant service...be ordered ...to perform for a period equal to the period prescribed in section 4(b) (section 454(b) of this Appendix) such civilian work contributing to the maintenance of the national health, safety, or interest as the Director may deem appropriate...” Note, however, that the legal authority to induct men into the military, which is contained in the Military

(continued...)

policy relating to this issue.¹⁸ Of course, in today's all-volunteer military, those who have moral objections to participating in war will likely choose not to join the military. Nonetheless, some people volunteer to join the armed forces with every intention of fulfilling their military obligations, but later develop religious or moral objections to participation in war. Such people may apply for transfer to non-combat related duties or for an administrative discharge, depending on the nature of their convictions. Following application, a formal investigatory procedure is initiated by the military to ascertain the facts and nature of the applicant's claim. Based on this investigation and the criteria for granting conscientious objector status defined in the DOD policy, a determination is made to either grant or deny the applicant's claim.

With respect to the criteria for granting conscientious objector status, a crucial one is the requirement that the individual be "opposed to participation in war in any form."¹⁹ In other words, the objection "must be to all wars rather than a specific war."²⁰ This standard precludes those who are opposed to some wars, but not all wars, from being classified as conscientious objectors.

What is "stop-loss" and what is its effect on separations and discharges?

Under federal law, the President has the authority to suspend laws related to promotion, retirement and separation of military personnel during a period of time when members of the Reserve Component have been called to active federal service.²¹ Since 1990, this authority has been delegated to the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service of the Navy, by executive order.²² Secretary of Defense Donald Rumsfeld delegated this authority to each of the individual military services on September 19, 2001, allowing those services to "stop loss" by keeping individuals on active duty beyond their normal date of separation or retirement. The purpose of stop-loss is to permit the military to retain people with critical skills during a time of crisis.

To date, the Air Force has adopted the most expansive stop-loss policy: it originally applied to almost all Air Force personnel, although it released people in a number of career fields from the constraints of stop-loss in January of 2002.²³

¹⁷(...continued)

Selective Service Act, expired on July 1, 1973. Therefore, this provision of law is not relevant to people in the military today.

¹⁸Department of Defense Directive 1300.6, *Conscientious Objectors*.

¹⁹Department of Defense Directive 1300.6, *Conscientious Objectors*, paragraph 5.1.1.1.

²⁰Department of Defense Directive 1300.6, *Conscientious Objectors*, paragraph 5.2.1.

²¹10 U.S.C. 12305.

²²Executive Order 12728, August 22, 1990. This authority was originally invoked by President George H. W. Bush during the Persian Gulf War and has remained in effect since then.

²³For example, officers in certain medical, logistics, and administrative fields, and enlisted (continued...)

Additionally, the Air Force has approved waivers to the policy for almost everyone who has requested it.²⁴ The Army, Navy, and Marine Corps have also adopted stop-loss plans, but they are more limited and apply only to people in certain career fields.

Most *involuntary* separations – for example, discharges due to criminal acts – will not be affected by stop-loss. Additionally, the adoption of a stop-loss policy does not modify service policies or regulations which might lead to an administrative discharge (e.g. for homosexuality) or to a medical discharge.

Compensation

What types of special pays and benefits are available to military personnel participating in OEF?

Military personnel serving in Afghanistan and nearby areas²⁵ are eligible for \$150 per month in “imminent danger pay,” sometimes referred to as “hostile fire pay.”²⁶ The Philippines, Indonesia, and Malaysia have recently been declared imminent danger zones as well. Imminent danger pay is meant as compensation for physical danger. To be eligible for this pay in a given month, a servicemember must have served some time in one of the designated zones, even if only a day or less.

Military personnel serving in Afghanistan and some nearby areas²⁷ are also eligible for “hardship duty pay” of between \$50 and \$150 per month.²⁸ Hardship duty pay is meant as compensation for the exceptional demands of duty in austere regions.

²³(...continued)

personnel in certain administrative and maintenance fields. Message from Air Force Deputy Chief of Staff for Personnel, “Stop Loss Review Update #2,” January 28, 2002.

²⁴Air Force Personnel Center Press Release No. 002, dated January 7, 2002, indicates that about 82 % of the waivers that were requested had been approved.

²⁵Designated areas for receiving imminent danger pay near Afghanistan include Uzbekistan, Kyrgyzstan, Tajikistan, Pakistan, Iran, Turkey, Azerbaijan, Iraq, Kuwait, Jordan, Saudi Arabia, Bahrain, Qatar, United Arab Emirates, Oman, Yemen, Somalia, Ethiopia, Sudan, and Egypt. Service in the airspace above Afghanistan, Iraq, Kuwait, Saudi Arabia, Bahrain, Qatar, Somalia, and Sudan qualifies as well. Also included are the waters and airspace over the Persian Gulf, the Red Sea, the Gulf of Aden, the Gulf of Oman, and the Arabian Sea north of 10 degrees north latitude and west of 68 degrees east longitude. Note that this is not a comprehensive list of all imminent danger locations: there are many locations in other parts of the world that have previously received this designation.

²⁶37 U.S.C. 310.

²⁷Designated areas for receiving hardship duty pay near Afghanistan include Kazakhstan, Krygystan, Uzbekistan, Turkmenistan, Tajikistan, India, Pakistan, Oman, United Arab Emirates, Armenia, Georgia, Russia, Ethiopia, Djibouti, and Eritrea. Only people serving on the ground are eligible for Hardship Duty Pay. Hardship Duty Pay replaced what was known as Foreign Duty Pay in 1999.

²⁸37 U.S.C. 305.

Military personnel must serve at least 30 days in the designated area before becoming eligible for this monthly payment.

U.S. military personnel serving in or near Afghanistan may also be eligible for a family separation allowance of \$100 per month if they are separated from their dependents for 30 continuous days or more.²⁹ Once the 30-day threshold has been reached, the allowance is applied retroactively to the first day of separation.

Another benefit available to those deployed to Afghanistan and other designated areas nearby³⁰ is eligibility for the Savings Deposit Program.³¹ This program allows service members to earn a guaranteed rate of 10 percent interest on deposits of up to \$10,000, which must have been earned in the designated areas. The deposit, with interest, is normally paid to the servicemember within 90 days after he or she leaves the eligible region, although earlier withdrawals can sometimes be made for emergency reasons. To be eligible for this benefit, a servicemember must serve at least 30 days, or at least one day in each of three consecutive months, in the designated areas.

Finally, one of the more generous benefits for those serving in Afghanistan and certain surrounding areas is the “combat zone tax exclusion.”³² Afghanistan and the airspace above it have been designated a “combat zone” as of September 19, 2001. Military personnel serving in direct support of the operations in this combat zone are also eligible for the combat zone tax exclusion.³³ (Additionally, certain countries in the Persian Gulf region³⁴ have been designated combat zones since 1991). For enlisted personnel and warrant officers, this means that all compensation for active military service in a combat zone is free of federal income tax. For officers, their compensation is free of federal income tax up to the maximum amount of enlisted basic pay plus any imminent danger pay received.³⁵ While this benefit applies only to

²⁹37 U.S.C. 427.

³⁰Includes Kazakstan, Uzbekistan, Kyrgyzstan, Tajikistan, Pakistan, Turkmenistan, the waters of the Red Sea, the Gulf of Aden, the Gulf of Oman, and the Arabian Sea north of 10 degrees north latitude and west of 68 degrees east longitude, as well as the airspace above these regions.

³¹10 U.S.C. 1035.

³²26 U.S.C. 112.

³³To qualify under this provision, servicemembers must be serving in Pakistan, Tajikistan, Jordan, Uzbekistan, or Kyrgyzstan and be receiving hostile fire or imminent danger pay.

³⁴Includes Iraq, Kuwait, Saudi Arabia, Bahrain, Qatar, United Arab Emirates, Oman, the waters of Persian Gulf, the Red Sea, the Gulf of Aden, the Gulf of Oman, and the Arabian Sea north of 10 degrees north latitude and west of 68 degrees east longitude, as well as the airspace above these regions.

³⁵For 2001, the maximum excludable amount for officers was \$5,043.00 per month. For 2002, the maximum excludable amount for officers is \$5,532.90 per month.

federal income tax, almost all states have provisions extending the benefit to their state income tax as well.³⁶

What type of compensation and benefits are available to the dependents of U.S. military personnel who die in the line of duty while participating in OEF or ONE?

Dependents of active duty military personnel who die in the line of duty are eligible for a variety of special payments and benefits. The major compensation and benefit programs are listed below.

Compensation In The Form Of Cash Payments:

Death Gratuity. The death gratuity is a lump sum payment of \$6,000 to the surviving spouse of the servicemember, or to the children of the servicemember in equal shares if there is no spouse.³⁷ The death gratuity may also be paid if death occurs within 120 days after release from active duty if the death was resulted from injury or disease incurred or aggravated during military service.³⁸ The purpose of this benefit is to provide cash quickly to the survivors in order to help them meet immediate needs.

Payment for Unused Leave. The servicemembers' designated beneficiary, or the statutorily specified next of kin if no beneficiary was designated, is entitled to a payment for any unused leave the servicemember had accrued at the time of death.³⁹

Servicemembers Group Life Insurance (SGLI). All members of the military are automatically enrolled in SGLI for the maximum benefit of \$250,000. Servicemembers may reduce or decline coverage under SGLI, but doing so requires that they request this in writing. In contrast to most civilian life insurance providers, SGLI pays benefits in the event of combat-related deaths.⁴⁰

Compensation In The Form Of Annuities:

Survivor Benefit Plan. Effective September 10, 2001, all active duty personnel are covered by the Survivor Benefit Plan (SBP).⁴¹ Under the SBP, if a servicemember dies while on active duty, the surviving spouse is entitled to an

³⁶Department of Defense, *Military Compensation Background Papers*, 5th Edition, September, 1996, 832-837.

³⁷10 U.S.C. 1475-1480.

³⁸10 U.S.C. 1476

³⁹10 U.S.C. 501(d)(1)

⁴⁰38 U.S.C. 1965-1979.

⁴¹The program was originally designed to provide benefits only to the widows or widowers of retirement-eligible servicemembers.

annuity, which is based in part on the deceased's basic pay level⁴² and years of service. The interaction between SBP benefits, Social Security benefits, and Dependency and Indemnity Compensation is complex and may result in reduced or offset SBP benefits. For a full description of these interactions, see CRS Report 94-779, *The Military Survivor Benefit Plan: A Description of Its Provisions*, by David Burrelli. SBP payments are terminated for a surviving spouse who remarries before age 55.

Dependency and Indemnity Compensation. The Dependency and Indemnity Compensation (DIC) program, administered by the Department of Veterans' Affairs, provides a monthly payment to unremarried surviving spouses, or eligible children, of servicemembers who die because of service related illnesses or injuries. At present, the monthly payment for surviving spouses is \$935 per month, plus \$234 per child. Additional payments can also be made if the survivor has certain disabilities.⁴³ See the previous paragraph on the Survivor Benefit Plan for important information on the combination of DIC with other government provided annuities.

Social Security Survivor Benefits. Surviving spouses and children of servicemembers who die while on active duty may be eligible for Social Security Survivor benefits if they meet certain eligibility requirements.⁴⁴ The amount of benefits vary based on a number of factors, including the average lifetime earnings of the decedent, the number of quarters the decedent paid Social Security taxes, and certain characteristics of the beneficiary, such as age and relationship to the decedent. Remarriage can have an effect on a widow's or widower's benefit. See the previous paragraph on the Survivor Benefit Plan for important information on the combination of Social Security benefits with other government provided annuities.

Burial Benefits:

Expenses Related To Death. The following expenses may either be paid directly by the military service to which the deceased belonged, or reimbursed to the individual who pays for them: "(1) Recovery and identification of the remains. (2) Notification of the next of kin or other appropriate person. (3) Preparation of the remains for burial, including cremation if requested by the person designated to direct disposition of the remains. (4) Furnishing of a uniform or other clothing. (5) Furnishing of a casket or urn, or both, with outside box. (6) Hearse service. (7) Funeral director's service. (8) Transportation of the remains, and roundtrip transportation and prescribed allowances for an escort of one person, to the place selected by the person designated to direct disposition of the remains or, if such a selection is not made, to a national or other cemetery which is selected by the

⁴²Depending on when the deceased servicemember entered active duty, the basic pay level will be either the monthly basic pay earned just prior to death, or the average of the highest 36 months of basic pay which the servicemember earned.

⁴³38 U.S.C. 1311

⁴⁴A thorough description of Social Security Survivor Benefits, including eligibility requirements, is provided in *Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means (The Green Book)*, available at [<http://www.congress.gov/brbk/html/ebssc1.shtml>] under the heading "Detailed Program Description (From the Green Book)."

Secretary and in which burial of the decedent is authorized. (9) Interment of the remains. (10) Presentation of a flag of the United States to the person designated to direct disposition of the remains...(11) Presentation of a flag of equal size to the flag presented under paragraph (10) to the parents or parent, if the person to be presented a flag under paragraph (10) is other than the parent of the decedent.”⁴⁵

Burial In National Cemeteries. Members of the Armed Forces who die while on active duty are eligible for burial in national cemeteries, including Arlington National Cemetery. The government provides a gravesite, opening and closing of the grave, headstone or marker, and maintenance of the site at no cost to the family. Inurement of cremated remains in a columbarium is an option as well.

Other Benefits:

Housing Benefits. Current law allows the Secretary of Defense, or the Secretary of Transportation in the case of the Coast Guard when it is not operating as a service of the Navy, to permit the family of a servicemember who dies on active duty to remain in government quarters for up to 180 days, free of charge. Alternatively, the Secretary can authorize payment of the Basic Allowance for Housing, a tax-free allowance designed to cover most of the costs of civilian housing in a given region, for 180 days.⁴⁶

Medical Benefits. The unremarried surviving spouse of a deceased servicemember remains eligible for TRICARE, the military health care system, until age 65. At age 65, the surviving spouse becomes eligible for TRICARE for Life, provided he or she has Medicare Part A and Part B coverage. Children of the deceased servicemember remain eligible for TRICARE until they become 21 years of age, although eligibility may extend past age 21 if the child meets certain requirements and is either enrolled full time in an institution of higher learning or has a severe disability. Surviving family members of a deceased servicemember receive TRICARE benefits at the active duty dependent rate for a three year period, after which they receive TRICARE benefits at the retiree dependent rates.⁴⁷

Commissary and Exchange Access. The unremarried surviving spouse of a deceased servicemember is eligible for unlimited access to the commissary and exchange systems indefinitely. Children of a deceased servicemember are eligible for unlimited access to the commissary and exchange system until they become 21 years of age or get married, although eligibility may extend past age 21 if the child meets

⁴⁵10 U.S.C. 1482

⁴⁶37 U.S.C. 403(1).

⁴⁷Legislation governing military health care benefits is located at 10 U.S.C. 1071 et. seq. For more information on TRICARE, see CRS Issue Brief IB93103, *Military Medical Care Services: Questions and Answers*, by Richard Best. See also the DOD sponsored website, [<http://www.tricare.osd.mil>]

certain requirements and is either enrolled full time in an institution of higher learning or has a severe disability.⁴⁸

What protections and advantages does the Soldiers' and Sailors' Civil Relief Act (SSCRA) provide to military personnel?

Military personnel, including reservists called into active federal service, are eligible for a broad array of legal protections under the Soldiers' and Sailors' Civil Relief Act (SSCRA) of 1940 and its amendments.⁴⁹ (Note, however, that National Guardsmen who are serving in a state status, including full time National Guard duty under Title 32 of the U.S. Code, are *not* covered by the SSCRA).⁵⁰ Among other things, the SSCRA provides military personnel with certain protections against rental property evictions, mortgage foreclosures, insurance cancellations, and government property seizures to pay tax bills. The SSCRA also limits to 6 percent the amount of interest that the servicemember has to pay on loans – except student loans – incurred prior to entry onto active duty. Usually, the provisions of the SSCRA only apply during the period of active military service, or for a short period of time afterwards. For a full description of the legal protections provided to activated reservists by the SSCRA, see the CRS Report 91-342, *The Soldiers' and Sailors' Civil Relief Act, as Amended to Date: A Summary*, by Robert B. Burdette.

⁴⁸See DOD Directive 1330.17-R, *Armed Services Commissary Regulations*, and DOD Directive 1330.9, *Armed Services Exchange Regulations*.

⁴⁹50 USC 510 -593.

⁵⁰ For more information on non-federal status for National Guardsmen, see CRS Report RL30802, *Reserve Component Personnel Issues: Questions and Answers*, by Lawrence Kapp.

Force Structure

Does the military have sufficient manpower to conduct OEF while simultaneously conducting missions in Bosnia, Kosovo, Southwest Asia, and elsewhere?

Prior to the September 11th attacks, there was a serious debate within Congress and the executive branch over whether the military was being tasked with more missions than it could realistically handle, given its manpower levels. Congress was especially concerned that these missions – in Bosnia, Kosovo, Southwest Asia, the Sinai, and elsewhere – might be producing PERSTEMPO levels high enough to have a negative effect on retention.⁵¹ As such, Congress passed laws requiring the services to track the PERSTEMPO of every servicemember, to monitor individual PERSTEMPO levels more closely, and to pay an allowance of \$100 per day to servicemembers assigned lengthy or numerous deployments.⁵² Similar concerns about PERSTEMPO led General Eric Shinseki, the Army Chief of Staff, to assert before the House Armed Services Committee in July, 2001, that “Given today’s mission profile, the Army is too small for the mission load it is carrying.” During that hearing, both Shinseki and Secretary of the Army Thomas White endorsed a proposal to increase the Army’s endstrength from 480,000 to 520,000 soldiers.⁵³

Since September 11, Operation Enduring Freedom has dramatically increased the manpower needs of the military services. These needs have been filled primarily through the call up of over 73,000 reservists coupled with longer duty days and higher PERSTEMPO rates for some active duty personnel.⁵⁴ This response has been

⁵¹ PERSTEMPO is the rate at which military personnel are deployed away from their home station. Although deployments can have a positive effect on retention, studies indicate that after a certain threshold level, high PERSTEMPO levels have a negative effect on retention. See for example James Hosek and Mark Totten, *Does Perstempo Hurt Reenlistment? The Effect of Long or Hostile Perstempo on Reenlistment*, RAND, 1998; Paul Sticha, Paul Hogan and Maris Diane, *Personnel Tempo: Definition, Measurement, and Effects on Retention, Readiness and Quality of Life*, Army Research Institute, 1999; and Peter Francis, *OPTEMPO and Readiness*, Center for Naval Analysis, 1999.

⁵²The original PERSTEMPO legislation was contained in Sections 586 and 923 of the FY2000 National Defense Authorization Act, P.L. 106-65, October 5, 1999. Amendments were contained in Section 574 of the FY2001 National Defense Authorization Act, P.L. 106-398, October 30, 2000, and in Section 513 of the FY2002 National Defense Authorization Act, P.L. 107-107, December 28, 2001. Provisions codified at 10 U.S.C. 136, 10 U.S.C. 487, 10 U.S.C. 991, and 37 U.S.C. 435.

⁵³Nicholas J. Carter, *ArmyLink News*, “White, Shinseki: Army Needs More Soldiers,” July 24, 2001.

⁵⁴The PERSTEMPO legislation passed by Congress in 1999 contained a national security waiver which stated “The Secretary of the military department concerned may suspend the applicability of this section [991] to a member or any group of members under the Secretary’s jurisdiction when the Secretary determines that such a waiver is necessary in the national security interests of the United States.” 10 U.S.C. 991(d). On October 8, 2001, Deputy

(continued...)

successful so far, but it could cause problems – for example, unacceptably low retention rates or unacceptable performance levels – if carried out over an extended period of time. To avoid this, some have suggested increasing the number of people available to handle the military’s current mission profile, either by increasing active component endstrengths, by calling more reservists to active duty, or by contracting out certain functions to civilian personnel. Others have suggested reducing the military’s mission profile by decreasing or eliminating U.S. involvement in certain missions. For example, the Pentagon is reportedly interested in reducing the number of U.S. troops serving in the Sinai and in Bosnia.⁵⁵ Other alternatives include the increased use of allied military personnel in the war against terrorism, and increasing the use of technologies which reduce manpower needs.

Does the military have the right force structure to wage a “war against terrorism”?

Given the success of the war in Afghanistan to date, it would be difficult to argue that the military does not have a force structure capable of waging an effective war against terrorism. But the argument can be made that the military’s force structure is not adequately weighted towards certain types of units which are critical to such a war; for example, special forces, military police, ISR (intelligence, surveillance, reconnaissance), and strategic mobility. Additionally, these types of units may well become even more critical if the war against terrorism moves from Afghanistan – where the Taliban ruled the country and attempted to hold fixed positions – to other countries where terrorists operate clandestinely. On the other hand, it is important to remember that the military must be prepared to respond to the full spectrum of possible threats, including adversaries with conventional forces. Thus, in assessing force structure, prosecuting a war on terrorism must be balanced with the continued ability to respond to threats from other quarters as well.

What would it take to reinstitute the draft? Is a return to conscription in the U.S. likely?

Any attempt to reinstate the draft would require congressional approval. The legal framework for conscription is already codified in law,⁵⁶ but the law contains a provision which prohibits actual induction into the Armed Forces after July 1, 1973.⁵⁷

⁵⁴(...continued)

Secretary of Defense Paul Wolfowitz signed an order indefinitely suspending part of the PERSTEMPO legislation, including payment of the per diem allowance.

⁵⁵Alan Sipress and Tom Ricks, “Pentagon Seeks Sinai Cuts,” *Washington Post*, January 30, 2002, 20. John Hendren, “Rumsfeld Asks NATO To Trim Bosnia Forces To Bolster War On Terrorism,” *Los Angeles Times*, December 19, 2001.

⁵⁶The Military Selective Service Act, 50 U.S.C. App. 451 et. seq.

⁵⁷50 U.S.C. App. 467(c) states: “Notwithstanding any other provision of this title, no person shall be inducted for training and service in the Armed Forces after July 1, 1973, except persons now or hereafter deferred under section 6 of this title after the basis of such deferment ceases to exist.”

To reinstate the draft, Congress would have to pass legislation reauthorizing inductions.

At the present time, it appears unlikely that the U.S. will reinstate the draft in response to manpower needs generated by the current conflict. This assessment stems, in part, from the rapid success of the campaign in Afghanistan, which has diminished concerns that the U.S. would need to send a large ground force into the region. Even if this were not the case, however, conscription has limitations which weigh against its use in the present conflict. Specifically, conscription is useful for producing large numbers of basically trained military personnel, but it is not very useful for producing the type of high skill specialists which the military needs most in the current conflict: for example, intelligence analysts, special forces personnel, and pilots. These people need years of training and high motivation levels to become proficient in their military occupations. However, should the war against terrorism evolve into a more traditional and prolonged ground conflict, requiring heavy use of ground troops, the draft might become more useful.⁵⁸

⁵⁸A prolonged conflict would raise the additional concern of manpower loss due to reserve demobilization. Under the Partial Mobilization authority which is currently being used to mobilize reserve units and individuals, reservists can only be kept on active duty for up to 24 months.