



Women in Combat: Issues for Congress

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Summary

Over the last few years, women have become more involved in combat operations. Since September, 2001 (to February 28, 2013), 299,548 female service members have been deployed for contingency operations in Iraq and Afghanistan. In approximately 12 years of combat operations in Iraq and Afghanistan, over 800 women have been wounded and over 130 have died. According to the Department of Defense (DOD), as of February 29, 2013, 16,407 female members were currently deployed in contingency operation. Women have been recognized for their heroism, two earning Silver Star medals.

The expansion of roles for women in the armed forces has evolved over decades. Women are not precluded from serving in any military unit by law today. DOD policy restricting women from serving in ground combat units was most recently modified in 1994 and 2013. Under the 1994 policy, women could not be assigned to units, below the brigade level, whose primary mission is to engage in direct combat on the ground. Primarily, this meant that women were barred from infantry, artillery, armor, combat engineers, and special operations units of battalion size or smaller. On January 24, 2013, then-Secretary of Defense Leon Panetta rescinded the rule that restricted women from serving in combat units.

Various commissions and others have reviewed the issue of women in the military, in general, and women in combat units, at times at the direction of Congress. For example, the FY2009 Duncan Hunter National Defense Authorization Act contained language establishing the Military Leadership Diversity Commission. Among its duties, the Commission was to conduct a study and report on the “establishment and maintenance of fair promotion and command opportunities for ethnic- and gender-specific members of the Armed Forces at the O-5 (Lieutenant Colonel for Army, Marine Corps and Air Force, and Commander for Navy and Coast Guard) grade level and above.” Among its recommendations, the Commission stated that DOD should take deliberate steps to open additional career fields and units involved in direct ground combat to women.

The Ike Skelton National Defense Act for Fiscal Year 2011 directed DOD to conduct a review to “ensure that female members have *equitable* opportunities to compete and excel in the Armed Forces.” [Emphasis added.]

With the repeal of the ban on women serving in combat units, some have questioned whether or if current standards should be kept in place, reviewed, modified, etc. Many women’s right supporters contend that the former exclusionary policy, or standards that, de facto, act in an exclusionary manner, prevents women from gaining leadership positions and view expanding the roles of women as a matter of civil rights. Critics view such changes as potentially damaging to military readiness.

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Issue

Laws prohibiting women from serving in combat units were repealed in the early 1990s. However, until recently, it has been Department of Defense (DOD) *policy* to restrict women from certain units and military occupations, especially ground combat units. In recent years, efforts have been underway to remove these restrictions. Others have questioned the need to modify or remove these restrictions and the purposes for doing so. On January 24, 2013, the ground combat restrictions for women were rescinded by DOD. Nevertheless, Congress has authority to make changes in these matters.¹

Congress may consider additional issues including equal opportunity, equal responsibility (such as draft registration), readiness and cohesion, manpower needs of the military, and training standards.

Background

The history of women serving with or in the U.S. military varies by service.² (E.g., women were assigned as lighthouse keepers as early as the 1830s.) In 1908, Congress enacted language which led to the creation of the Navy Nurse Corps.³ In 1918, the Secretary of the Navy allowed women to sign up for clerical duties in the Marine Corps. In 1918, the Secretary of the Navy allowed women to enroll for clerical duty.⁴ In 1942 Congress opened the Naval Reserve to women.⁵ In 1942, the Coast Guard created the women reserves know as SPARs. On May 14, 1942, the Women's Army Auxiliary Corps was created "for noncombatant service with the Army of the United States for the purpose of making available to the national defense when needed the knowledge, skill, and special training of the women of this Nation."⁶ Over one year later, the Women's Army Corps (WAC) was made a part of the regular Army on a temporary basis.⁷ The Marine Corps Women's Reserve was established in 1943.

In 1948, Congress made women a permanent part of the military services.⁸ The Women's Armed Services Integration Act of 1948 limited the proportion of women in the military to 2% of the enlisted force and 10% of officers. This limit was repealed in 1967.⁹

¹ Congress has the authority "To make Rules for the Government and Regulation of the land and naval Forces." U.S. Constitution, Article 1, Section 8, clause 14.

² Parts of this report are based on an earlier CRS Issue Brief, *Women in the Armed Forces* by David F. Burrelli, November 14, 1998.

³ P.L. 115; 35 Stat. 146; May 13, 1908.

⁴ See: http://www.womenmarines.org/wm_history.aspx

⁵ P.L. 689; 56 Stat. 730; July 30, 1942.

⁶ Public Law 554, 56 Stat. 278, May 14, 1942.

⁷ "That there is hereby established in the Army of the United States, for the period of the present war and for six months thereafter or for such shorter period as the Congress by concurrent resolution or the President by proclamation shall prescribe, a component to be known as the 'Women's Army Corps'." Public Law 110; 57 Stat. 371; July 1, 1943.

⁸ Public Law 625; 62 Stat. 356; June 12, 1948: "Women's Armed Services Integration Act of 1948."

⁹ P.L. 90-130; 81 Stat. 374; November 8, 1967.

In the years that followed the passage of the Women's Integration Act of 1948, women made up a relatively small proportion of the armed forces—less than 1% until 1973. By 1997, women accounted for 13.6% of the active duty endstrength, increasing to 14.5% by September, 2011.

Two major factors led to the expansion of the role of women in the armed forces. First, after the end of the draft and the beginning of the All-Volunteer Force in December 1973, the military services had difficulty in recruiting and retaining enough qualified males, thereby turning attention to recruiting women.¹⁰ Second, the movement for equal rights for women, particularly in the 1960s and 1970s, led to demands for equal opportunity in all fields, including national defense, and a gradual removal of the restrictions against them.

In 1974, the age requirement for women enlisting without parental consent was made the same as for men.¹¹ In the next year, legislation was enacted that allowed women to be admitted to the three service academies.¹²

In 1977, Congress directed the Secretary of Defense to submit to Congress a definition of the term "combat" and recommendations for expanding job classifications for female members of the armed forces.¹³

In 1978, women were permitted to be assigned permanent duty on noncombatant Navy ships, and up to six months of temporary duty on other ships.¹⁴

The Senate Armed Services Committee commented on women in combat in its report concerning the reinstatement of registration for the Selective Service in 1979. Citing military and other reasons for differential treatment of men and women by Selective Service, the Committee stated:

The committee feels strongly that it is not in the best interest of our national defense to register women for the Military Selective Service Act, which would provide needed military personnel upon mobilization or in the event of a peacetime draft for the armed forces.¹⁵

Confusion over the role of women in combat became evident during Operation Urgent Fury. On October 25, 1983, U.S. service personnel were sent to the island nation of Grenada to rescue Americans. Four U.S. military police women arrived shortly after the invasion and were promptly sent back to Fort Bragg, N.C.¹⁶ At Fort Bragg, Major General Trobaugh had removed all the females from the invasion Task Force. Following an intervention by Lieutenant General Mackmull, women were reattached to the unit and finally deployed to Barbados on November 2,

¹⁰ Janowitz, Morris, and Charles C. Moskos, Five Years of the All-Volunteer Force: 1973-1978, *Armed Forces and Society*, V, February 1979: 171-218.

¹¹ P.L. 93-290; 88 Stat. 173; May 24, 1974. Prior to enacting this law, males who were not less than 17 years of age could enlist, females must have been at least 18 years of age.

¹² P.L. 94-106; 89 Stat. 537; October 7, 1975. Women had already been admitted to the Coast Guard and Merchant Marine Academies by administrative action.

¹³ P.L. 95-97; 91 Stat. 327; July 30, 1977.

¹⁴ P.L. 95-485; 92 Stat. 1623; October 20, 1978.

¹⁵ U.S. Congress, Senate, Committee on Armed Services, Requiring Reinstatement of Registration For Certain Persons Under the Military Selective Service Act, and For Other Reasons, Rept. 96-226, 96th Cong., 1st Sess., June 19, 1979.

¹⁶ See: http://www.history.army.mil/html/museums/showcase/women/awm_text.html

1983, to serve with the lead element of the Task Force while the rest of the Task Force deployed to Grenada the same day.¹⁷

In February 1988, the Department of Defense adopted a “risk rule” that excluded women from noncombat units or missions if the risks of exposure to direct combat, hostile fire, or capture were equal to or greater than the risks in the combat units they support. This rather subjective criteria permitted women to be assigned to noncombat units or positions if the risk was less than comparable to the combat units with which they were associated. In 1988, the General Accounting Office (now the Government Accountability Office, GAO) noted that a primary barrier to the expansion of the number of women in the services was that women were not allowed in most combat jobs, and were also barred from many combat-related jobs.¹⁸ The GAO reported that approximately one-half of the active duty military positions were opened to women.¹⁹

Following Operation Desert Storm, where women played a more prominent role than in previous conflicts, and after the political fallout concerning sexual harassment and assault at the Navy’s 1991 Tailhook convention in Las Vegas,²⁰ efforts to expand the assignment of women were renewed. Legislation enacted in 1991 called for the repeal of the statutory limitations on the assignment of women in the armed forces to combat aircraft and naval vessels, and, the establishment of a commission on the assignment of women in the armed forces.²¹ On November 15, 1992, the commission issued its report.²² Among its many recommendations were the following (verbatim):

- DOD should establish a policy to ensure that no person who is best qualified is denied access on the basis of gender to an assignment that is open to both men and women. As far as it is compatible with the above policy, the Secretary of Defense should retain discretion to set goals that encourage the recruitment and optimize the utilization of women in the Services, allowing for the requirements of each Service.
- Military readiness should be the driving concern regarding assignment policies; there are circumstances under which women might be assigned to combat positions.
- The sense of the commission is that women should be excluded from direct land combat units and positions. Furthermore the commission recommends that the existing service policies concerning direct land combat exclusion be codified. Service Secretaries shall recommend to the Congress which units and positions should fall under the land combat exclusions.

¹⁷ Raines, Edgar F., Jr., *The Rucksack War: U.S. Army Operational Logistics in Grenada, 1983*, Center of Military History: Washington, D.C., 2010: 494.

¹⁸ Combat jobs include those that directly confront and engage the enemy, such as infantry; combat-related jobs include those that support combat units in the field, such as those in support positions with combat engineers, as well as infantry and tank support units, including units that transport fuel, ordinance and ammunition, for example.

¹⁹ U.S. General Accounting Office, *Women in the Military More Military Jobs Can be Opened Under Current Statutes*, GAO/NSIAD-88-222, September 1988: 3. See also: U.S. General Accounting Office, *Women in the Military Impact of Proposed Legislation to Open More Combat Support Position and Unites to Women*, GAO/NSIAD-88-197BR, July 1988.

²⁰ Boyer, Peter J., *Admiral Boorda’s War*, *The New Yorker*, September 16, 1996: 68.

²¹ P.L. 102-190; 105 Stat. 1365; December 5, 1991.

²² Presidential Commission on the Assignment of Women in the Armed Forces, *Report to the President*, November 15, 1992.

- In view of the evidence gathered by this commission with regard to the potential consequences of assigning women to combat positions, current DOD and Service policies with regard to Army, Air Force and Navy aircraft on combat missions should be retained and codified by means of the reenactment of Section 8549 of Title 10, U.S. Code which was repealed by P.L. 102-190, Section 531 for the Air Force, and reenactment of the provisions of 10 U.S.C. Section 6015 prohibiting women from assignment to duty on aircraft engaged in combat missions, which was repealed by P.L. 102-190 for the Navy, and codification of Army policy.
- Repeal existing laws and modify Service policies for servicewomen to serve on combatant vessels except submarines and amphibious vessels.
- Retain the DOD risk rule [as explained above] as currently implemented. Navy policies which implement the risk rule should be modified to reflect the changes made [in the above recommendation].

In addition, the commission recommended retaining the current policies prohibiting the assignment of women in special operations forces.

On January 13, 1994, Secretary Aspin lifted the 1988 risk rule.²³

On April 28, 1993, then-Secretary of Defense Les Aspin released a memorandum directing the Services to open more positions to women and establishing an implementation committee to review and make recommendations on such implementation issues.

Several months later, Congress enacted language that:

- repealed the prohibition on women serving on combatant vessels and aircraft;
- required the Secretary of Defense to ensure occupational performance standards were gender-neutral; and
- required the Secretary of Defense to notify the House and Senate Armed Services Committees 90 days before any policy changes were to be made concerning the assignment of women to ground combat roles, and, required the Secretary of Defense to notify these committees 30 days prior to the opening of any “combatant unit, class of combatant vessel, or type of combat platform” to women.²⁴

Effective October 1, 1994, Secretary Aspin approved a new assignment rule:

A. Rule. Service members are eligible to be assigned to all positions for which they are qualified, except that women shall be excluded from assignment to units below the brigade²⁵ level whose primary mission is to engage in direct combat on the ground, as defined below.

B. Definition. Direct ground combat is engaging an enemy on the ground with individual or crew served weapons, while being exposed to hostile fire and to a high probability of direct physical contact with the hostile force’s personnel. Direct ground combat takes place well

²³ U.S. Department of Defense, Office of the Secretary of Defense, Memorandum: Direct Ground Combat Definition and Assignment Rule, January 13, 1994.

²⁴ P.L. 103-160; 107 Stat. 1659 et seq.; November 30, 1993, see also Legislative History.

²⁵ A brigade or its equivalent is a unit of approximately 3,000-5,000 persons.

forward on the battlefield while locating and closing with the enemy to defeat them by fire, maneuver, or shock effect.

Secretary Aspin further specified that these assignment policies and regulations may include the following restrictions on the assignment of women:

- where the Service Secretary attests that the cost of appropriate berthing and privacy arrangements are prohibitive;
- where units and positions doctrinally required to physically collocate and remain with direct combat units that are closed to women;
- where units are engaged in long range reconnaissance operations and Special Operations Forces missions; and
- where job related physical requirements would necessarily exclude the vast majority of women Service members.

Supporters of these changes noted that they would open more opportunities for women in the services. Critics saw these changes as putting women at greater risk since they removed the ‘substantial risk’ of being captured from the definition of ground combat.

Subsequently, situations evolved that highlighted the roles performed by women in the military relative to the policy prohibiting them from combat units. First, Operation Iraqi Freedom (OIF) began on March 20, 2003. This was the first large-scale mobilization of U.S. troops since Operation Desert Shield/Desert Storm in the early 1990s. The nonlinear battlefields of Iraq blurred the distinctions between forward and rear operating areas—as the story of the PFC Jessica Lynch ambush showed.²⁶

Second, for rotation, training, readiness and other reasons, the Army moved to a “Modular Redesign.”²⁷ Under this concept, Brigade Combat Teams (BCT) serve as the basic large tactical combat unit of the Army. These BCT are supported by Multi-Functional Support Brigades which could be collocated with the BCTs. These support brigades included noncombat personnel, many of whom were women. Such collocation appeared to some to be at odds with the 1994 policies on the assignment of women.

Third, because of the nonlinear and irregular nature of the battle in Iraq and Afghanistan, the definition of ‘direct ground combat’ in the 1994 policy became less useful: what did ‘well forward’ mean on a nonlinear battlefield and how useful was the ‘primary mission’ criteria when noncombat units regularly engage in direct combat to carry out their mission? In this environment, the Army and Marine Corps utilized women to search Iraqi females for weapons, and to patrol with foot soldiers, usually in door-to-door-type operations.²⁸ Also, women have been

²⁶ Center for Military Readiness, Policy Analysis, *Women in Land Combat*, report no. 16, April 2003. The debate was reinvigorated following the reports, accurate or otherwise, of the capture of PFC Jessica Lynch and the death of PFC Lori Ann Piestewa following an ambush after their unit took a wrong turn in Iraq; the efforts to use such reports to advance a particular policy or agenda; and, the debate over media coverage of the incident ensued. See: Schmidt, Susan, and Vernon Loeb, ‘She was Fighting to the Death’, *Details Emerging of W. Va. Soldier’s Capture and Rescue*, *Washington Post*, April 3, 2002: A1, Scarborough, Rowan, *Crash Caused Lynch’s ‘Horrific Injuries,’* *Washington Times*, July 9, 2003: 1, O’Bieme, Kate, *An Army of Jessicas*, *National Review*, May 19, 2003, Ritea, Steve, *Jessica Lynch’s Story: A Little Too Perfect?*, *American Journalism Review*, <http://www.ajr.org/article.asp?id=3091>.

²⁷ CRS Report RL32476, *U.S. Army’s Modular Redesign: Issues for Congress*, by Andrew Feickert.

²⁸ “‘Lioness’ is an up-close look at the evolving role of women in the U.S. Military – not just in traditional roles as (continued...) ”

involved in convoy escort missions that came under fire,²⁹ as well as have served in female engagement teams which help units deal with female locals while operating in Afghan villages.³⁰

Concerns over the collocation and forward deployment of support units resulted in language being included in the House version of the National Defense Authorization Act for Fiscal Year 2006. Under this law, if the Secretary of Defense proposes to make any change to the 1994 ground combat exclusion policy, or open or close military career fields that had been in effect since May 18, 2005, the Secretary must first notify Congress and then wait 30 days (while Congress is in session) before implementing any such change.³¹ In addition, the Secretary of Defense was directed to submit a report concerning the Secretary's review of the current and future implementation of the policy regarding the assignment of women with particular attention to the Army's unit modularization efforts and associated assignment policies.

In a 2007 report, the RAND Corporation noted that while the Army was complying with the DOD assignment policy, it may not have been complying with the separate Army assignment policy.³² Further, the report stated "[w]e find considerable evidence that support units are collocated with direct combat units if the definition of collocation is based purely on proximity. However, if the definition of collocation is based on interdependency *and* proximity, the evidence is inconclusive."³³ The report noted that hundreds of female Army members had received a Combat Action Badge suggesting that regardless of what the report concludes, the Army recognizes that females have been in combat.³⁴

Commission Recommendations in 2011

The Duncan Hunter National Defense Authorization Act for Fiscal Year 2009³⁵ contained language establishing the Military Leadership Diversity Commission. Among its duties, the Commission was to conduct a study and file a report regarding diversity issues in the Armed Forces with attention to the "establishment and maintenance of fair promotion and command opportunities for ethnic- and gender-specific members of the Armed Forces at the O-5³⁶ grade level and above."

(...continued)

nurses and support personnel but as weapon-toting frontline troops." Perry, Tony, *Women on Iraq's Front Lines*, *Los Angeles Times*, November 13, 2008. See also: <http://www.youtube.com/watch?v=DUo1yoU9lxs>

²⁹ See: <http://www.defense.gov/news/newsarticle.aspx?id=16391>

³⁰ See: <http://www.military.com/news/article/spec-ops-needs-a-few-good-women.html>

³¹ P.L. 109-163; 119 Stat. 3251; January 6, 2006. As described in this law, "such a change may then be implemented only after the end of a period of 30 days of continuous session of Congress (excluding any day on which either House of Congress is not in session) following the date on which the report is received."

³² The Army policy defines direct combat to include the closing with the enemy in order to "destroy or capture the enemy, or while repelling the enemy's assault by fire, close combat, or counterattack." [Emphasis added.] Headquarter, U.S. Department of the Army, 1992, p. 5.

³³ Harrell, Margaret C., et al., *Assessing the Assignment Policy for Army Women*, RAND, National Defense Research Institute, 2007: xvii.

³⁴ The Combat Action Badge recognizes soldiers who have engaged the enemy, or were engaged by the enemy during combat operation. See: <http://www.army.mil/symbols/CombatBadges/action.html>

³⁵ P.L. 110-417; 122 Stat. 4476; October 14, 2008; see §596.

³⁶ Lieutenant Colonel for Army, Marine Corps and Air Force, and Commander for Navy and Coast Guard.

During hearings held in 2010, Defense Department officials stated that they were looking at the assignment issue regarding women as part of their three-year cyclic review and expected to make their recommendations to their leadership within a few months.³⁷

In March, 2011, the Commission released its report, “From Representation To Inclusion: Diversity Leadership and the 21st-Century Military.”³⁸ Three of its recommendations are particularly relevant to the issue of women and combat:

Recommendation 9

DOD and the Services should eliminate the “combat exclusion policies” (discussed later in this report) for women, including the removal of barriers and inconsistencies, to create a level playing field for all qualified servicemembers. The Commission recommends a time-phased approach:

- Women in career fields/specialties currently open to them should be immediately able to be assigned to any unit that requires that career field/specialty, consistent with current operational environment.
- DOD and the Services should take deliberate steps in a phased approach to open additional career fields and units involved in “direct ground combat” to qualified women.
- DOD and the Services should report to Congress the process and timeline for removing barriers that inhibit women from achieving senior leadership positions.

Recommendation 18

As part of the accountability reviews, the Services, in conjunction with the Chief Diversity Officer (established in Recommendation 15), should conduct annual “barrier analyses” to review demographic diversity patterns across the military life cycle, starting with accessions....

b. The annual analyses should include

- accession demographics
- retention, command selection, and promotion rates by race/ethnicity and gender
- analysis of assignment patterns by race/ethnicity and gender
- analysis of attitudinal survey data by race/ethnicity and gender
- identification of persistent, group-specific deviations from overall averages and plans to investigate underlying causes
- summaries of progress made on previous actions.

³⁷ U.S. Congress, House, Armed Services Committee, Military Personnel Subcommittee, Military Personnel Legislative Priorities, Hearing, 111th Cong., 2nd Sess., Report No. 111-139, March 17, 2010: 19.

³⁸ Military Leadership Diversity Commission, 1851 South Bell Street, Arlington, VA, 22202. Although the Final Report was issued on-line on March 7, 2011, the routing letter from the Chairman to the President and Congress was dated March 15, 2011.

Recommendation 20

... Congress should revise Title 10, Section 113, to require the Secretary of Defense to report annually an assessment of the available pool of qualified racial/ethnic minority and female candidates for the 3- and 4-star flag/general officer positions.

- The Secretary of Defense must ensure that all qualified candidates (including racial/ethnic minorities and women) have been considered for nomination of every 3- and 4-star position. If there were no qualified racial/ethnic minority and/or female candidates, then a statement of explanation should be made in the package submitted to the Senate for the confirmation hearings.³⁹

This last point is relevant in that it has been argued that denying women access to combat position reduces their opportunity to attain the high ranks in the military.

DOD Review

Sec. 535 of the Ike Skelton National Defense Act for Fiscal Year 2011⁴⁰ stated:

(a) REVIEW REQUIRED—The Secretary of Defense, in coordination with the Secretaries of the military departments, shall conduct a review of laws, policies, and regulations, including the collocation policy,⁴¹ that may restrict the service of female members of the Armed Forces to determine whether changes in such laws, policies, and regulations are needed to ensure that female members have equitable opportunities to compete and excel in the Armed Forces.

(b) SUBMISSION OF RESULTS—Not later than April 15, 2011, the Secretary of Defense shall submit to the congressional defense committees a report containing the results of the review.

This language clearly establishes the concern for equal opportunities for women as the focus of the review. This language makes no mention of the effects on military readiness such changes may produce.

In February 2012, the Office of the Under Secretary of Defense (Personnel and Readiness) released its report.⁴² In the conclusion, it stated:

The Department intends to:

1. Eliminate the co-location exclusion from the 1994 policy;

³⁹ Military Leadership Diversity Commission, Final Report, pp. 127, 129 and 130.

⁴⁰ P.L. 111-383; 214 Stat. 4217; January 7, 2011.

⁴¹ “At present, DOD’s Direct Combat assignment Rule (DGCAR) policy states that women can be assigned to all positions for which they are qualified, except within units below the brigade level whose primary mission is to engage in direct combat on the ground. The Army co-location assignment restriction further states that women can serve in any officer or enlisted specialty or position, except in those specialties, positions or units (battalion size or smaller) which are assigned a routine mission to engage in direct combat, or which collocated routinely with units assigned a direct combat mission.” <http://www.armyg1.army.mil/hr/wita/>

⁴² U.S. Department of Defense, Office of the Under Secretary of Defense (P&R), Report to Congress on the Reviews of Laws, Policies and Regulations Restricting the Service of Female Members in the U.S. Armed Forces, February, 2012.

2. As an exception to policy, allow Military Department Secretaries to assign women in open occupational specialties to select units and positions at the battalion level (for Army, Navy, and Marine Corps) whose primary mission is to engage in direct combat on the ground;
3. Based on the exception to the policy, assess the suitability and relevance of the direct ground combat unit assignment prohibition to inform policy decisions; and
4. Pursue the development of gender-neutral physical standards for occupational specialties closed due to physical requirements.

The proposal would allow commanders to co-locate support unit with women assigned (i.e., in open occupational specialties) with ground combat units noting that the “[r]emoval of the co-location operating restriction responds to the current operational environment.” However, if assigning women in this manner becomes part of the force structure, the report did not explain what would happen in a different operational environment, such as large-scale, multiple linear battlefields, as seen in World War II. Further, it could be claimed that although the Services have flexibility, it can be argued that moving ahead in this manner may make the changes a *fait accompli* with little flexibility resulting and no intention of returning to the previous restrictions. In the current operational environment the policy has been successful according to DOD, which also shows that DOD has been in tacit violation of its own policies regarding co-location for some time.⁴³

The response to the proposed changes was somewhat muted.⁴⁴ Because these changes were relatively modest, some expressed disappointment that they did not go far enough.⁴⁵

The report noted that these changes would fall disproportionately on the Army and Marine Corps. Issues arising for the Navy, for the most part, are centered around berthing accommodations, particularly on submarines.

According to Defense Department data, as of February 28, 2013, a total of 143,014 service members are deployed (of which 16,407 were female, or 11.4%).

“Gender-Neutral Standards”

On January 24, 2013, Secretary of Defense Leon Panetta announced that the Department of Defense (DOD) was rescinding the Direct Combat Exclusion Rule on women serving in previously restricted occupations (i.e., combat). In making this announcement, it was stated:

The Department of Defense is determined to successfully integrate women into the remaining restricted occupational fields within our military, while adhering to the following guiding principle developed by the Joint Chiefs of Staff: ... Validating occupational

⁴³ “‘We all laughed at it,’ said one female Army Colonel, referring to the Feb. 9 change.... They are just letting us do what we’ve been doing for years. It hasn’t really changed anything,” said the Colonel, who asked not to be identified.” Tilghman, Andrew, New Women-In-Combat Policy Opens Few New Doors, *Army Times*, February 27, 2012: 12.

⁴⁴ Bumiller, Elisabeth Pentagon Allows Women Closer to Combat, but Not Close Enough for Some, *The New York Times*, February 9, 2012.

⁴⁵ The report also stated that the Department gave notice of the changes commencing the congressional review timeline required in Title 10 United States Code, Section 652, which means these changes became policy since Congress did not act on them.

performance standards, both physical and mental, for all military occupational specialties (MOS), specifically those that remain closed to women. Eligibility for training and development within designated occupational fields should consist of qualitative and quantifiable standards reflecting the knowledge, skills, and abilities necessary for each occupation. For occupational specialties open to women, the occupational performance standards must be **gender-neutral** as required by P.L. 103-160, Section 542 (sic) (1993). [Emphasis added.]

In reference to P.L. 103-160, Section 543 states:

SEC. 543. GENDER-NEUTRAL OCCUPATIONAL PERFORMANCE STANDARDS.

(a) GENDER NEUTRALITY REQUIREMENT- In the case of any military occupational career field that is open to both male and female members of the Armed Forces, the Secretary of Defense--

- (1) shall ensure that qualification of members of the Armed Forces for, and continuance of members of the Armed Forces in, that occupational career field is evaluated on the basis of common, relevant performance standards, without differential standards of evaluation on the basis of gender;
- (2) may not use any gender quota, goal, or ceiling except as specifically authorized by law; and
- (3) may not change an occupational performance standard for the purpose of increasing or decreasing the number of women in that occupational career field.

(b) REQUIREMENTS RELATING TO USE OF SPECIFIC PHYSICAL REQUIREMENTS-

- (1) For any military occupational specialty for which the Secretary of Defense determines that specific physical requirements for muscular strength and endurance and cardiovascular capacity are essential to the performance of duties, the Secretary shall prescribe specific physical requirements for members in that specialty and shall ensure (in the case of an occupational specialty that is open to both male and female members of the Armed Forces) that those requirements are applied on a gender-neutral basis.
- (2) Whenever the Secretary establishes or revises a physical requirement for an occupational specialty, a member serving in that occupational specialty when the new requirement becomes effective, who is otherwise considered to be a satisfactory performer, shall be provided a reasonable period, as determined under regulations prescribed by the Secretary, to meet the standard established by the new requirement. During that period, the new physical requirement may not be used to disqualify the member from continued service in that specialty.

(c) NOTICE TO CONGRESS OF CHANGES- Whenever the Secretary of Defense proposes to implement changes to the occupational standards for a military occupational field that are expected to result in an increase, or in a decrease, of at least 10 percent in the number of female members of the Armed Forces who enter, or are assigned to, that occupational field, the Secretary of Defense shall submit to Congress a report providing notice of the change and the justification and rationale for the change. Such changes may then be implemented only after the end of the 60-day period beginning on the date on which such report is submitted.

The use of the term “gender-neutral,” particularly with regard to physical standards, seemingly makes such standards a non-issue in terms of assignments to occupational specialties currently closed to women. However, the use of the term “gender-neutral physical standards” raises questions depending on how it is defined. A plain reading of the term suggests that men and women would be required to meet the same physical standards in order to be similarly assigned. However, in the past, the Services have used this and similar terms to suggest that men and women must exert the same amount of energy in a particular task, regardless of the work that is actually accomplished by either.

For example, the Air Force Fitness Test Scoring for males under 30 years of age requires males to run 1.5 miles in a maximum time of 13:36 (min.:secs.): the female maximum time is 16:22. A female who runs at this slower rate would actually receive a higher score than a male who runs nearly three minutes faster. The minimum number of push-ups for males and females in the same age group is 33 and 18, respectively. In the case of push-ups, males and females who achieve the minimum passing number of push-ups receive the same score.

As written, this language can be the subject of differing interpretations. Since no standards exist for women in the then-closed occupations, would women be required to meet the current existing standards, would separate standards be created, or would the existing standards be re-evaluated? What is lacking is a clear definition of “gender-neutral” vis-a-vis the goals to be attained. Recent quotes from senior military leaders seem to suggest different things.

... Chief of Naval Operations Adm. Jonathan W. Greenert said it will be up to special operations commands to determine how they will transition the standards to females.⁴⁶

“We’re not going to just throw open the doors and say ‘OK, go at it,’ said Marine Lt. Gen. Robert Milstead, deputy commandant for manpower and reserve affairs. ‘We’re doing this responsibly’ ... ‘I think we are going to be challenged every step of the way,’ Milstead said. ‘There will be people who question: Why do you have that standard?’”⁴⁷

“If we do decide that a particular standard is so high that a woman couldn’t make it, the burden is now on the service to come back and explain to the secretary, why is it that high? Does it really have to be that high?’ Translation: If women can’t meet the standards, we’ll just ‘gender-norm’ them.”⁴⁸

Although it can be argued that there are women who can meet and exceed many male physical standards, the experiences with the Canadian military and recent Marine Corp Infantry Officers Course (IOC), suggest that large numbers of women will not succeed if held to these same higher standards. In addition, forcing women to continuously meet higher standards has been found to increase their injury and attrition rates.⁴⁹ A few foreign nations allow women to serve in combat units but “[r]ules and enforcement for military servicewomen vary in different countries.”⁵⁰

⁴⁶ Watson, Julie, Marine Leader: Skepticism In Infantry About Women, Yahoo.com, January 31, 2013.

⁴⁷ Michaels, Jim, Debate Over Women In Combat Shifts To Physical Strength, USA Today, February 4, 2013.

⁴⁸ Quoting Gen. Martin Dempsey, chairman of the Joint Chiefs of Staff in, Parker, Kathleen, Failing Our Troops, Washington Post, February 3, 2013: 15.

⁴⁹ Scarborough, Rowan, Army may train women for rigor of front lines, Studies predict injury, attrition, Washington Times, July 30, 2012.

⁵⁰ Fisher, Max, Map: Which countries allow women in front-line combat roles?, *The Washington Post*, January 25, 2013.

In the Canadian experience in which women were recruited for the 16-week infantry training course which was identical to the men's course. The outcome was described as the "high cost of recruiting women that yielded poor results."⁵¹

The Marine Corps opened its IOC to women, planning to admit up to 100 women in a one-year experiment. Toward the end of 2012, two female Marines signed up and begun training; neither completed the 13-week program.⁵² In the IOC class that began in March, 2013, two more women participated and dropped from the program early in the training.⁵³

Submarines

Toward the end of the Clinton Administration, efforts were made to assign women to submarines.⁵⁴ However, language was contained in the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 that seemingly halted these efforts. Essentially, this language prohibited the Navy from assigning women to submarines from May 10, 2000 forward until the Secretary of Defense submits to Congress written notice of such a proposed change and following a period of 30 days of "continuous session of Congress (excluding any day on which either the House of Congress is not in session)..."⁵⁵

Then-Secretary of Defense, Robert Gates, notified Congress on February 23, 2010, of a decision by the Navy to allow women to serve on nuclear submarines in the next year.⁵⁶ In 2011, the Navy was in the process of assigning women to submarines.⁵⁷ By mid-2012, 25 women had been assigned to submarines and had gone on patrols.⁵⁸

Selective Service

Many of those who emphasize equal rights, responsibilities and women's abilities,⁵⁹ say women in the armed forces cannot advance to the top without combat experience. Some carry the

⁵¹ "Of the 60 women recruited for the Canadian Infantry since last year, only one has successfully completed the 16-week training program and is serving in the infantry, according to Cmdr. Judith Harper....", Moore, Molly, Canada Puts Women on Front Line, *Los Angeles Times*, November 23, 1989. More recently, Israel expanded combat roles for women with mixed results. Gil Ronen, "General Who Supported Women in Combat Says: 'No More!'" *Israel National News*, July 23, 2011.

⁵² deGrandpre, Andrew, USMC drops second female from infantry course, *The Marine Corps Times*, October 15, 2012: <http://www.marinecorpstimes.com/news/2012/10/marine-corps-womem-infantry-officers-course-101512/>

⁵³ Dao, James Women (and Men) Face Bid Hurdles in Training for Marine Infantry Units, *The New York Times*, March 29, 2013.

⁵⁴ Pentagon panel says women should serve on Subs, *CNN U.S.*, May 26, 2000.

⁵⁵ P.L. 106-398; 114 Stat. 1654A-136; October 30, 2000.

⁵⁶ Pentagon OKs lifting the ban on women in submarines, *Reuters*, February 23, 2010.

⁵⁷ Melia, Michael, Navy Prepares Submarines for 1st Female Officers, *Norfolk Virginian-Pilot*, July 25, 2011. See: P.L. 106-398; 114 Stat. 1654A-136; October 30, 2000. See also: http://www.navy.mil/search/print.asp?story_id=70940&VIRIN=&imagetype=1&page=0

⁵⁸ Associate Press, Women say they're fitting in on submarines, *Kitsap Sun*, June 18, 2012.

⁵⁹ Bacon, Lance M., Odierno: "We Need Their Talent," *Army Times*, October 24, 2011. Odierno: "This is about managing talent. We have incredibly talented females who should be in those positions. We have work to do within the [Department of Defense] to get them to recognize and change."

argument further to say women cannot be equal in society as long as they are barred from full participation in all levels of the national security system. In their view, modern weapons have equalized the potential for women in combat, since wars are less likely to be fought on a hand-to-hand basis, and have made it impossible to protect women from the destructiveness of combat; in any event, properly trained women would be able to fight successfully and exempting them from combat is not fair to men. Some note that equal access to combat would also require equal responsibilities of registering for and being subject to the draft.⁶⁰ In the Supreme Court decision in *Rostker v. Goldberg*, in the majority opinion, Justice William Rehnquist wrote:

[t]he existence of the combat restrictions clearly indicates the basis for Congress' decision to exempt women from registration. The purpose of registration was to prepare for a draft of combat troops. Since women are excluded from combat, Congress concluded that they would not be needed in the event of a draft, and therefore decided not to register them.⁶¹

It has been suggested that this issue can be made moot by terminating Selective Service registration. It is possible for *Rostker v. Goldberg* to be overturned. Likewise, Congress has the authority to change draft registration laws (that currently pertain only to males) to include women.⁶²

Should Women be Barred from Combat Positions?

Supporters of opening more areas to women note that they are already serving, fighting, and in some cases, dying in combat.⁶³ Critics contend that it is the military that was ignoring its own policy and thereby creating a *fait accompli* that put women and the military mission at risk.⁶⁴

Opponents also argue that when relationships result in pregnancies, it is the women rather than the men who get pregnant, and pregnancy can lead to personnel rotation issues and personnel shortages.⁶⁵

Those opposed to women in combat note that the progress of women is not the most important issue at hand. They contend that national security has been and would further be weakened because of the presence of women in combat units. These critics note disruptions to cohesion and high rates of attrition for females in labor intensive specialties due to lower average upper body strength and higher rates of stress fractures. Those opposed note that close combat situations have and continue to exist, especially in Afghanistan, and that there is a distinction between 'returning fire' and 'offensive close combat.'

⁶⁰ A Draft for Women?, *New York Post*, June 19, 2011.

⁶¹ *Rostker v. Goldberg*, 453 U.S. 57 (1981).

⁶² Title 50 Appendix, US Code, Section 453.

⁶³ Baldor, Lolita C., Associated Press, Yahoo.com, Death Highlights Women's Role in Special Ops Teams, *Yahoo.com*, October 25, 2011.

⁶⁴ Maurer, Kevin, The Army Is Recruiting Elite Women Soldiers, *The Washington Post Magazine*, October 30, 2011. "While Congress still bans women from serving in combat units, the [female] soldiers selected from this group will serve alongside the Army's most elite units on the battlefield." This article incorrectly stated that Congress bans women from serving in combat units.

⁶⁵ Four U.S. Senators have asked Army Secretary John McHugh to rescind a policy that makes pregnancy a punishable offense for some soldiers serving in Iraq, saying it "defies comprehension." Source: Senators Lead Calls for Revoking Pregnancy Policy, by Michael Gisick, *Stars and Stripes*, December 23, 2009.

Since women themselves are divided on the issue,⁶⁶ one option is to permit women who meet the service standards (physical, training, etc.) to be assigned to combat positions, but that they should not be forced into combat.⁶⁷ Critics contend that it would be unfair to permit women a choice that is not available to men, and that to make the choice available to both men and women would make it difficult for the services to function, especially in the event of war or national emergency.

Any changes proposed by the Services will likely be subjected to congressional scrutiny. Congress may accept any proposed changes or seek to subject such changes to certain modifications. Among the additional issues Congress may consider are equal opportunity, equal responsibility (such as draft registration), readiness and cohesion, manpower needs of the military, and training standards.

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⁶⁶ Both men (53%) and women (53%) favor an expanded role for women in the military. See <http://www.cbsnews.com/stories/2009/08/15/opinion/polls/main5244312.shtml>. See also Dan Lamothe, "Marines Split on Women Joining Combat Units," *Marine Corps Times*, April 19, 2011.

⁶⁷ <http://dailycaller.com/2013/02/07/poll-most-women-believe-they-should-not-be-forced-into-combat/>