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Reserve Component Personnel Issues: Questions and Answers

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Lawrence Kapp
Specialist in National Defense
Foreign Affairs, Defense, and Trade Division

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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 Naval 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); and reserve component personnel issues that might be of particular interest to the 109th Congress (question 13).

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 Naval 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, 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.”¹ 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,² 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 are further assigned to one of its three sub-components: the Selected Reserve, the

¹ 10 U.S.C. 10102. The language was recently changed by 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 need 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.

² For a discussion of the distinction between the Reserves and the National Guard, see questions 5 and 11.

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 Reserve³ 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.⁴ 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.⁵ 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 10 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. (See question 10 for more information on mobilization authorities). There is no IRR

³ In fact, units and members of units in the Standby Reserve may not be ordered to active duty (except for training) before units of the Ready Reserve, 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 Selected 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).

⁴ *Reserve Component Programs: Fiscal Year 1999 Report Of The Reserve Forces Policy Board*, Office of the Secretary of Defense, March 2000, 53.

⁵ 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.

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 Guard⁶ 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 10 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.⁷ 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 10 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 10 for more information on mobilization authorities).

3. How Many People Are in the Reserve Components?

As of September 30, 2004, the total personnel strength of the Ready Reserve reported by DOD was 1,148,035. This figure is broken down by service and category of reservist in Table 1. In addition, there are another 21,902 members of the Standby Reserve and 617,600 members of the Retired Reserve, although these categories of reservists are much less likely to be mobilized than Ready Reservists are.

⁶ Currently, only the Army National Guard has personnel in the ING.

⁷ *Reserve Component Programs: Fiscal Year 1999 Report Of The Reserve Forces Policy Board*, Office of the Secretary of Defense, March 2000, 51.

Table 1: Personnel Strength of the Reserve Components as of September 30, 2004⁸

	Selected Reserve	Individual Ready Reserve/Inactive National Guard	Standby Reserve	Retired Reserve	TOTAL
Army National Guard	342,918	1,428	0	0	344,346
Army Reserve	204,131	117,732	715	315,477	638,055
Naval Reserve	82,558	66,085	2,502	115,210	266,355
Marine Corps Reserve	39,644	61,799	992	14,319	116,754
Air National Guard	106,822	0	0	0	106,822
Air Force Reserve	75,322	37,015	17,340	169,898	299,575
Coast Guard Reserve	8,011	4,570	353	2,696	15,630
TOTAL	859,406	288,629	21,902	617,600	1,787,537

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 recruiting, training, equipment maintenance, and unit administration. There are four types of FTS personnel: Active Guard & Reserve, Military Technician, 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 in each Reserve component to achieve its assigned missions.”⁹

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.”¹⁰ They may also perform “duties relating to defense against weapons of mass destruction.”¹¹ Although they are serving full-time, AGR personnel are still considered members of the Selected Reserve. They are

⁸ Data provided by the Office of the Assistant Secretary of Defense for Reserve Affairs and the Defense Manpower Data Center.

⁹ Department of Defense Directive 1205.18, “Full Time Support to the Reserve Components,” May 25, 2000, 8.

¹⁰ Ibid. See also 10 USC 12310.

¹¹ 10 USC 12310(c).

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 Naval 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. Unlike regular civilian employees, however, MTs are generally required to maintain membership in the Selected Reserve as a condition of their employment. These technicians are known 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. Some technicians, however, are not members of the Selected Reserve. They are referred to as “non-dual-status military technicians.”¹² Whether dual-status or non-dual-status, the function of MTs is to administer reserve component units, train reserve component personnel, and maintain reserve component equipment. There are no MTs in the Naval Reserve, the Marine Corps Reserve, or the Coast Guard Reserve.

Active Component. Active Component (AC) personnel are active-duty members of the military who “are assigned or attached to Reserve component organizations and units by their respective Service to provide advice, liaison, management, administration, training, and support....”¹³ 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.”¹⁴ 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.

¹² Dual-status military technicians can be involuntarily ordered to active duty in the same way as other members of the Selected Reserve (see question 2). Non-dual-status military technicians cannot be involuntarily ordered to active duty. For more information on military technicians, see CRS Report RL30487, *Military Technicians: The Issue of Mandatory Retirement for Non-Dual-Status Technicians*.

¹³ Department of Defense Directive 1205.18, “Full Time Support to the Reserve Components,” May 25, 2000, 8.

¹⁴ Department of Defense Directive 1205.18, “Full Time Support to the Reserve Components,” May 25, 2000, 8.

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, Naval 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.”¹⁵ The National Guard has a much longer historical pedigree. It is descended from the colonial era militia¹⁶ 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.¹⁷

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*

¹⁵ U.S. Constitution, Article 1, Section 8, clauses 12 and 13.

¹⁶ 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.

¹⁷ See U.S. Constitution, Article I, Section 8, clauses 15 and 16, and Article II, Section 2, clause 1.

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.”¹⁸ 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.

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 service¹⁹ 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 Iraq²⁰ (1998-2003; 6,108 reservists involuntarily activated),

¹⁸ Charles L. Cragin, Assistant Secretary of Defense for Reserve Affairs, remarks printed in *The Officer*, September 2000, 34.

¹⁹ 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.

²⁰ 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
(continued...)

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,²¹ respectively (2001-present; over 459,766 reservists involuntarily activated as of December 21, 2004).²² 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 ongoing Bosnian peacekeeping mission (1995-present; 31,553 reservists involuntarily activated as of August 12, 2004). The ongoing Kosovo mission (1999-present; 11,485 reservists involuntarily activated as of August 12, 2004) has been a combination of armed conflict and peacekeeping.

It is important to point out that this tally only accounts for those reservists who were involuntarily ordered into active federal service: it does not include those reservists who served on active duty under voluntary orders or annual training orders; it does not include members of the National Guard serving in a state status (see question 11); and, with the exception of those mobilized in response to the terrorist attacks of September 11, 2001, it does not include involuntary activations of reservists for domestic reasons, such as responding to civic disorders. Although data

²⁰ (...continued)

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 ordered to active duty under the post-September 11, 2001, Partial Mobilization (for more information on mobilization authorities, see question 9). However, the executive order authorizing the Presidential Reserve Call-up remains in effect and it is possible that individuals could still be called up under this authority.

²¹ 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.

²² Between September 11, 2001 and December 21, 2004, 459,766 reservists (which includes the National Guard) were involuntarily called to active duty under federal orders for ONE, OEF, and OIF. Of these, 181,157 were serving on active duty as of December 21, 2004, while 278,609 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 multiple times. As of August 31, 2004, there were 55,600 reservists who had been mobilized more than once in support of ONE, OEF, and OIF. Source: Colonel James Shoenhard and Mr. Dan Kohner, Office of the Assistant Secretary of Defense, Reserve Affairs, *NEEFIF Daily Mob-Demob Report*, November 12, 2004 and e-mail correspondence dated September 13, 2004.

on reservists participating in these ways are limited, they indicate utilization of at least 40,000 more reservists than by other means.²³

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 42 million days of work in FY2002 and 63 million days in FY2003.²⁴ 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.

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.²⁵ 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.

²³ Based on calculations made by Robert Goldich, Specialist in National Defense, Congressional Research Service from official data provided by the Department of Defense.

²⁴ Office of the Assistant Secretary of Defense for Reserve Affairs (Readiness, Training and Mobilization), *Rebalancing Forces: Easing Stress on the Guard and Reserve*, January, 2004, p. 2.

²⁵ See 10 USC 331-335.

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.

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 when mobilized for a contingency operation — such as operations Noble Eagle,²⁶ Enduring Freedom and Iraqi Freedom — they receive pay and benefits identical to those of active duty personnel, although there are some exceptions..²⁷ When ordered to active duty in a non-contingency operation for a period of 30 days or less, they

²⁶ Operation Noble Eagle qualifies if the reservist is brought onto active duty under 10 U.S.C. 12304. 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.

²⁷ Some areas in which benefits are not identical are medical care for family members, housing allowances, and re-enlistment bonuses. The family members of reservists called to active duty in support of a contingency operation are eligible to enroll Tricare Standard and Tricare Extra, but not Tricare Prime, if they are activated for 30 days or less. The family members of reservists called to active duty for more than 30 days — whether in support of a contingency operation or not — are eligible to enroll in Tricare Standard (a fee-for-service plan formerly known as CHAMPUS), Tricare Extra (a preferred provider health care option), and Tricare Prime (a DOD “HMO”). Note, however, that prior to March 10, 2003, family members were only eligible for Tricare Prime if the reservist’s orders were for a period of 179 days or more. For an explanation of the differences between Tricare Standard, Tricare Extra, and Tricare Prime, see CRS Issue Brief IB93103, *Military Medical Care Services: Questions and Answers*, by Richard Best. With respect to housing allowances, those activated in support of a contingency operation receive the Basic Allowance for Housing (BAH) regardless of the length of their tour. Those serving on active duty for a non-contingency operation, however, only receive BAH if they are on orders for 140 days or more. Otherwise, they receive a housing allowance known as BAH-II, which is generally lower than BAH. Reservists serving on active duty who are eligible for a re-enlistment bonus may receive a maximum bonus of \$15,000 (37 U.S.C. 308b), as opposed to a maximum bonus of \$60,000 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.

receive most, but not all, of the pay and benefits that active duty personnel receive.²⁸ 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,²⁹ and members of the National Guard receive a different set of pay and benefits when they are serving full-time in a state status.³⁰

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.

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 works 38 days (14 days of annual training plus 24 days of IDT) but receives 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. Reservists are generally eligible for most special and incentive pays during AT, although there are some exceptions. 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

²⁸ For example, they do not receive medical coverage for their families, and they receive a housing allowance known as BAH-II, which is generally lower than the normal Basic Allowance for Housing (BAH).

²⁹ Excluding Retired Reservists — whose retirement pay and benefits are compensation for at least twenty years of active and/or reserve service — members of the Selected Reserve receive the most generous package of pay and benefits. Members of the Individual Ready Reserve and the Standby Reserve are generally not paid and are eligible for only a few benefits.

³⁰ See questions 10-13.

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 Congress passed several provisions which significantly expanded 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 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 \$100. In return, TDP provides up to \$1,200 of coverage towards basic dental care procedures including diagnostic, preventive and limited restorative services, as well as some oral surgery and emergency services. Family members may enroll in the TDP, but doing so increases the annual premium.

Life Insurance. Members of the Selected Reserve are eligible to purchase up to \$250,000 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.³¹ 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

³¹ 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.

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 weekend drill and annual training will generate 77 retirement points.³² However, excluding points earned while in an active duty status (which includes annual training), reservists may not earn more than 90 points per year.³³ 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).

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 unlimited use of the commissary system, 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.³⁴

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).

³² 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.

³³ 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 Title 10 USC 12733.

³⁴ 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.

A number of bills were introduced in the 108th Congress to lower the age for receipt of retired pay from 60 to 55 or less. Although none of these bills became law, the 109th Congress may consider similar bills. 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.³⁵ (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 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. authorizes the President to involuntarily order members of the Selected Reserve and the Individual Ready Reserve to active duty 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 mobilize 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-present), during the low intensity conflict with Iraq³⁶ (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. authorizes the President³⁷ to involuntarily order members of the Ready Reserve to

³⁵ 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.”

³⁶ See footnote 20.

³⁷ 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
(continued...)

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 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 to mobilize reservists for Operations Noble Eagle, Enduring Freedom and Iraqi Freedom.³⁸

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. authorizes the President³⁹ to involuntarily order any member of the reserve components to active duty. 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

³⁷ (...continued)

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.

³⁸ 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 Secretary 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.

³⁹ 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.” 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.

active duty at any time; 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.⁴⁰ 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.⁴¹

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.⁴² 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

⁴⁰ 10 USC 688-690.

⁴¹ 10 USC 688(e).

⁴² See footnote 27.

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 entitled to the same pay, benefits, and legal protections as other reservists in federal service.⁴³

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. Guardsmen called up under this authority receive federal pay and benefits, and are entitled to certain legal protections⁴⁴ as though they

⁴³ 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).

⁴⁴ 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
(continued...)

were in federal service, but they are otherwise considered to be in a state duty status.

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 1940.⁴⁵ (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).⁴⁶ 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%.⁴⁷ 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 1994.⁴⁸ 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,

⁴⁴ (...continued)

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.

⁴⁵ 50 USC App. 501 et. seq.

⁴⁶ See footnote 44. See questions 5 and 11 for more information on non-federal status for National Guardsmen.

⁴⁷ 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.”

⁴⁸ 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.

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.⁴⁹ This time off is treated as a furlough or leave of absence,⁵⁰ and the reservist may not be required to use vacation leave, annual leave, or similar leave.⁵¹ Upon the completion of such military service, USERRA generally gives the reservist a right to re-employment.⁵²

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.⁵³ 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 protection to reservists with respect to job retraining, employer provided health care plans, and employer provided pension plans.⁵⁴

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.⁵⁵

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

⁴⁹ 38 USC 4311(a)

⁵⁰ 38 USC 4316 (b)(A).

⁵¹ 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.

⁵² 38 USC 4312.

⁵³ 38 USC 4316.

⁵⁴ 38 USC 4313, 4317, 4318

⁵⁵ 38 USC 4312 (e).

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

Tricare Eligibility 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,⁵⁶ Enduring Freedom and Iraqi Freedom — they and their families are entitled to receive medical benefits under Tricare, the military's health care system.⁵⁷ However, up until quite recently, non-activated reservists had limited access to Tricare.⁵⁸ This began to change in 2003⁵⁹ and 2004⁶⁰, as the 108th Congress passed several provisions which

⁵⁶ Operation Noble Eagle qualifies if the reservist is brought onto active duty under 10 U.S.C. 12304. 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 12) receive pay and benefits according to the laws of their state or territory.

⁵⁷ See question 10.

⁵⁸ See question 8 for more information on medical benefits for non-activated reservists.

⁵⁹ In 2003, Congress approved a provision which allowed reservists who had pending mobilization orders to use the military health care system up to 90 days before their active duty began (P.L. 108-136, section 703). Another provision extended the length of time which servicemembers, including demobilized reservists, could use Tricare after they had been released from active duty to 180 days (P.L. 108-136, section 704). A third provision allowed non-activated members of the Selected Reserve and their family members to enroll in Tricare if the member was eligible for unemployment compensation or was ineligible for health care coverage from their civilian employer (P.L. 108-136, section 702). Under this last provision, eligible reservists were required to pay a premium equivalent to "28 percent of the total amount determined by the Secretary [of Defense] on an appropriate actuarial basis as being reasonable for coverage." To date, DOD has not implemented this last provision, citing delays related to promulgating regulations and a lack of authorized funds. Moreover, all of these provisions were temporary and set to expire on December 31, 2004.

⁶⁰ In 2004, Congress made permanent the temporary provision passed in 2003 which allowed reservists with pending mobilization orders to use the military health care system up to 90 days before their active duty began. It also made permanent the temporary provision which extended the length of time which servicemembers could use Tricare after they had been released from active duty to 180 days. It did not pass legislation dealing with the temporary provision which authorized Tricare access for reservists who were eligible for unemployment compensation or was ineligible for health care coverage from their civilian employer, even though both the House and Senate versions of the National Defense Authorization Act contained provisions related to this topic. However, the report language

(continued...)

expanded access to Tricare to include certain non-activated reservists and their families. However, even when fully implemented, many non-activated reservists will still be ineligible for Tricare coverage under these provisions. The 109th Congress will likely hear from individuals and organizations advocating full access to Tricare for non-activated reservists and their families.

Supporters of full access to Tricare for non-activated reservists and their families argue that it would improve recruiting and retention in the Reserve Components, enhance the medical readiness of reservists, and facilitate the transition to and from active duty for mobilized reservists. Opponents have raised concerns about the cost of such an initiative, and the possibly adverse impact it might have on active duty recruiting and retention and the military medical system.

Providing non-activated reservists with full access to Tricare would undoubtedly be a significant recruiting and retention incentive for the Reserve Component. This in turn might allow the Reserve Component to be more selective in who it accepts and retains, resulting in a higher quality force. Additionally, by substantially enhancing the benefits of reserve membership, this policy might induce active duty personnel to transfer to the reserves at a higher than normal rate. This would be particularly beneficial if it induced active duty personnel to transfer to the reserves rather than returning completely to civilian life. However, while the Reserve Component would certainly benefit from such an infusion of experienced military personnel, the Active Component could be adversely impacted if the expanded health care benefit enticed people who otherwise would have stayed on active duty to transfer to the reserves. Additionally, such a benefit could alter retention patterns within the Reserve Components in such a way as to skew the balance between higher and lower ranks. Higher than necessary retention numbers might force the Reserves to either offer costly voluntary separation incentives or to separate people involuntarily from the reserves, a process which is usually adversarial and painful for the services to conduct.

Advocates also argue that allowing non-activated reservists to enroll in Tricare would improve the medical readiness of reservists. According to a Department of Defense survey conducted in 2000, just over 18% of reservists who had been

⁶⁰ (...continued)

accompanying the Ronald Reagan National Defense Authorization Act for Fiscal Year 2005 stated, "The conferees acknowledge the preference of the Secretary to conduct a demonstration project and expect the Secretary to proceed with a demonstration project to assess the feasibility and effectiveness of providing TRICARE benefits to Reserve members without employer-provided health insurance coverage using existing authority in section 1092 of title 10, United States Code." (House Report 108-767, *Conference Report to Accompany H.R. 4200*, 726). Yet another provision passed in 2004 provided Tricare coverage to reservists who had been activated since September 11, 2001, and who agreed to continue serving in the Selected Reserves after release from active duty. Under this provision, those who agree to continue serving the Selected Reserve are entitled to Tricare access for themselves and their family members for up to one year for each 90 days of active duty performed, provided the reservist pays a premium of "28 percent of the total amount determined by the Secretary [of Defense] on an appropriate actuarial basis as being reasonable for coverage." (P.L. 108-375, section 701(a))

previously mobilized “did not have any health insurance prior to mobilization/deployment.”⁶¹ Providing these uninsured individuals with the option to enroll in Tricare might lead to early detection and treatment of medical conditions which otherwise might disqualify a reservist from deploying. Even if the condition could not be treated, the reservist could be transferred to a more suitable job or separated from the military, thus enhancing the overall medical readiness of the Reserve Components. Additionally, they argue, this benefit would smooth the transition to and from active duty for reservists and their families, a factor made more salient by the continuing large scale mobilization of reservists in support of Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom. Others point out that allowing non-activated reservists and their families into Tricare — especially that part of the system where care is principally provided by military medical personnel, hospitals, and clinics — might overburden the system. This could produce longer waits for medical appointments and treatments, which might be perceived by active duty members as an erosion of their benefits. Additionally, some concerns have been raised in the past about the shift in military medicine away from combat related functions (treating burns, gunshot wounds, etc.) and towards family medicine (childbirth, pediatrics, etc.) The influx of reservists and their family members could exacerbate this trend.

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 access to Tricare, the military health care system.⁶² A number of proposals were introduced in the 108th Congress which would have lowered the age at which reservists are entitled to retired pay (and, consequently, Tricare). Some proposals would have universally lowered this age to 55, some would have created a sliding scale to lower the age (based, for example, on the individual retiree’s years of service), and some would have abolished the age requirement altogether. While none of these provisions were approved by either the House or the Senate in the 108th Congress, the large number of co-sponsors on these bills appear to indicate substantial support for them, making it likely that similar proposals will be introduced in the 109th Congress.

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.

⁶¹ Defense Manpower Data Center, DMDC Report 2002-05, *Draft Tabulations of Responses from the 2000 Survey of Reserve Component Personnel*, Volume 1, Table 15c.1, p. 355.

⁶² 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.”

Active duty retirees, they note, are eligible to draw retired pay immediately upon retirement, regardless of age.⁶³ Additionally, they argue that an improved retirement 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 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 cost⁶⁴ and the potential impact on active and reserve component force structure.⁶⁵

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

⁶³ 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 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.

⁶⁴ 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.

⁶⁵ This argument is similar to the one presented in the discussion on page 21 of extending Tricare access to non-activated reservists.

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.⁶⁶

Recent legislative proposals to address this issue have taken two forms. The first involves providing employees who are mobilized with a “pay differential” to make up any difference between their civilian and military pay. Such a policy would solve the immediate problem of the reservists’ pay loss; however, it could also generate new controversies. In particular, some of these reservists might end up being paid dramatically more than their active duty counterparts and other mobilized reservists for doing exactly the same military job.⁶⁷ Additionally, such a policy might require a substantial administrative effort in order to set up an equitable claims process — defining what counts and what doesn’t count as income with respect to both military and civilian pay⁶⁸ — and to protect against fraudulent claims.

Another type of proposal seeks to encourage private businesses to continue paying their mobilized employees by providing these business with a tax credit. The tax credit is proportional (usually 50%) to the amount of pay the business provides to its employees while those employees are serving on active duty. Some analysts

⁶⁶ The issue of financial losses for mobilized reservists is not a new one. The experience of the Gulf War showed that many reservists suffered financially due to mobilization. Given the military’s increasing reliance on the Reserve Component in the post-Cold War era (see question 6), this created a concern in Congress and in DOD that actual or potential financial losses would have a negative impact on recruiting and retention in the reserves, thereby undermining the readiness of the Reserve Component and its ability to carry out future missions. In 1996, Congress directed DOD to establish an optional income insurance program for reservists who were involuntarily ordered to active duty for more than 30 days. (P. L. 104-106, Section 512, February 10, 1996, National Defense Authorization Act for Fiscal Year 1996; 110 Stat. 299-305). Program participants were required to pay \$12.20 per month for each \$1,000 of coverage, up to a maximum of \$61.00 per month for \$5,000 of coverage. After 30 days of “covered service,” the insured reservists were entitled to receive a monthly benefit payment equivalent to the amount of coverage purchased, for up to twelve months out of any eighteen-month period. The program was meant to be self-financing, with benefits to be completely financed by the premiums paid into the system by enrolled reservists. The RRMIP, however, became insolvent soon after its debut in 1996 due to low enrollment and severe adverse selection. The program was terminated by Congress only a year later and Congress eventually appropriated a total of \$119 million to pay off insurance claims associated with the RRMIP. For more information on this topic, see CRS Report 98-652, *The Ready Reserve Mobilization Income Insurance Program*, by Lawrence Kapp.

⁶⁷ Of course, this same objection can be raised against the concept of mobilization insurance. Certain reservists with mobilization insurance policies would make dramatically more than their active duty counterparts, or other mobilized reservists without insurance policies, for doing the exact same job. However, in the case of mobilization insurance, there would probably be a perception that the extra pay was the result of the individual’s prudent financial management, while in the case of direct government reimbursement, there would probably be a perception that the extra pay was simply extra pay.

⁶⁸ For example, should military allowances count as income? Should per diem payments count as income? Should the tax savings which derive from military allowances or service in a combat zone count as income? How does one factor anticipated overtime or commissions into the calculation of civilian pay?

point out that while this approach could raise some of the equity issues mentioned in the previous paragraph, it would likely minimize them as the federal government would not be directly involved in adjudicating pay differentials and providing compensation add-ons. Also, this approach would not require any additional administrative work on the part of the mobilized reservist or the military to put it into effect; all of the paperwork would be handled by the employer as part of the business' tax filing. On the other hand, the effectiveness of this approach in minimizing pay loss for mobilized reservists is difficult to predict in advance, as it rests on the voluntary compliance of employers, who may or may not find the tax credit sufficiently appealing. Additionally, depending on the number of reservists mobilized in a given year, and the number of businesses taking advantage of such a tax credit, the loss of tax revenue in a given year could be substantial.

Most recently, distinct "pay differential" proposals were included in the House and Senate versions of H.R. 4200, the Ronald W. Reagan National Defense Authorization Act for FY2005. The Senate version contained a provision (section 1110) that would have required federal agencies to pay federal employees mobilized in support of a national emergency the difference between their civilian pay and their military pay. The House version contained a provision (section 605) that would have required the Secretary of Defense to pay certain involuntarily mobilized reservists up to \$3,000 per month to compensate them for income loss related to mobilization. Under this provision, reservists who experienced income loss would be eligible for such payments for any full month after the reservist completed either twelve continuous months of active duty or 18 months of active duty during the previous 60 months, or during a mobilization which occurred within six months of the reservist's last period of active duty. Neither the House nor the Senate provision was included in the final National Defense Authorization Act because "funding was not appropriated for Reserve income replacement payments to either Reserve members or federal government agencies."⁶⁹

⁶⁹ House Report 108-767, *Conference Report to Accompany H.R. 4200*, 713.