

108TH CONGRESS
2D SESSION

S. 2791

To enhance the benefits and protections for members of the reserve components of the Armed Forces who are called or ordered to extended active duty, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10, 2004

Mr. DASCHLE (for himself, Mrs. MURRAY, Ms. MIKULSKI, Mr. LEAHY, Mrs. LINCOLN, Mr. CORZINE, Mr. AKAKA, Mr. DORGAN, Mr. PRYOR, Mr. JOHNSON, and Mr. REID) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To enhance the benefits and protections for members of the reserve components of the Armed Forces who are called or ordered to extended active duty, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Guard and
5 Reserve Bill of Rights Act of 2004”.

1 **SEC. 2. PERIODS OF DEPLOYMENTS OF RESERVES OVER-**
2 **SEAS.**

3 (a) UNITED STATES CENTRAL COMMAND DEPLOY-
4 MENTS.—

5 (1) LIMITATION.—During a period when there
6 is in effect a policy of assigning units or members
7 of one or more of the active components of the
8 Armed Forces to duty in the area of responsibility
9 of the United States Central Command for a speci-
10 fied period of time of not less than one year, the
11 Secretary of Defense shall provide that the length of
12 such an assignment in the case of members of the
13 reserve components of the Armed Forces may not
14 exceed the length of such period for the cor-
15 responding active component reduced by the period
16 of time between the date of entry of the reserve com-
17 ponent members onto active duty and the date of the
18 deployment of such members for such assignment.

19 (2) TRANSITION.—Paragraph (1) applies to
20 members of reserve components assigned to duty in
21 the area of responsibility of the United States Cen-
22 tral Command on or after the date of the enactment
23 of this Act and to such members assigned to such
24 duty before such date who as of the date of the en-
25 actment of this Act have more than 90 days remain-
26 ing in such assignment.

1 (b) COMMUNICATION OF LENGTHS OF DEPLOYMENT
2 PERIODS TO RESERVES IN OPERATION IRAQI FREE-
3 DOM.—

4 (1) FINDINGS.—Congress makes the following
5 findings:

6 (A) Members of all components of the
7 Armed Forces, active and reserve, exhibit a re-
8 markable commitment and willingness to serve
9 their country in Iraq and Afghanistan, and
10 other United States military efforts around the
11 world and, in doing so, frequently face grave
12 risks and difficulties.

13 (B) While the members of the Armed
14 Forces have clearly and consistently dem-
15 onstrated their dedication to duty, much uncer-
16 tainty has arisen among them about the lengths
17 of their deployments and when they will be re-
18 turned to their loved ones. This confusion im-
19 pairs our troops' morale and places undue
20 strain on their families and their civilian em-
21 ployers.

22 (C) Fairness to the men and women of the
23 Armed Forces deployed overseas requires that
24 the Department of Defense—

1 (i) have clear policies regarding
2 lengths of deployment periods; and

3 (ii) communicate these policies and
4 other deployment-related information to
5 them and their families.

6 (D) While many military units were de-
7 ployed months before Operation Iraqi Freedom
8 was launched on March 19, 2003, the Depart-
9 ment of Defense did not announce a policy
10 about the length of deployments until August
11 2003.

12 (E) Even after the Department of Defense
13 issued its so-called “one year boots-on-the-
14 ground” policy regarding lengths of deployment
15 periods, many of the members of units deployed
16 overseas in Operation Iraqi Freedom learned
17 shortly before their scheduled return dates that
18 their deployments would be extended for
19 months beyond the one-year period provided
20 under that policy.

21 (2) REPORT.—

22 (A) REQUIREMENT FOR REPORT.—Not
23 later than March 1, 2005, the Secretary of De-
24 fense shall submit to the Committees on Armed
25 Services of the Senate and the House of Rep-

1 representatives a report on Department of Defense
2 policies governing the length of deployment pe-
3 riods applicable to members of reserve compo-
4 nents of the Armed Forces in connection with
5 Operation Iraqi Freedom, and on the commu-
6 nication between the Department of Defense
7 and reserve component personnel and their
8 families regarding the length of the deployment
9 periods.

10 (B) CONSULTATION REQUIREMENT.—In
11 preparing the report under this section the Sec-
12 retary shall consult with the Chairman and
13 other members of the Joint Chiefs of Staff and
14 with such other officials as the Secretary con-
15 siders appropriate.

16 (C) CONTENT.—The report under this
17 paragraph shall contain a discussion of the
18 matters described in subparagraph (A), includ-
19 ing the following matters:

20 (i) The process by which the Depart-
21 ment of Defense determined its policy re-
22 garding the length of deployment periods.

23 (ii) The reason that no such policy
24 was in place before Operation Iraqi Free-
25 dom began.

1 (iii) A comparison of the policy during
2 Operation Iraqi Freedom with Department
3 of Defense deployment policies that applied
4 to previous contingency operations.

5 (iv) The timeliness of the process for
6 notifying reserve component units for acti-
7 vation.

8 (v) The process for communicating
9 with activated reserve component members
10 and their families about demobilization
11 schedules.

12 (vi) The family support programs pro-
13 vided by the National Guard and other re-
14 serve components for families of activated
15 Reserves.

16 (vii) An assessment of lessons learned
17 about how the increased operations tempo
18 of the National Guard and other reserve
19 components can be expected to affect read-
20 iness, recruitment and retention, civilian
21 employers of Reserves, and equipment and
22 supply resources of the National Guard
23 and the other reserve components.

24 (D) MATTERS FOR PARTICULAR EMPHA-
25 SIS.—In the discussion of the matters included

1 in the report under this subsection, the Sec-
2 retary of Defense shall place particular empha-
3 sis on—

4 (i) lessons learned, including defi-
5 ciencies identified; and

6 (ii) near-term and long-term correc-
7 tive actions to address the identified defi-
8 ciencies.

9 (E) FORM OF REPORT.—The report shall
10 be submitted in unclassified form, but may in-
11 clude a classified annex.

12 **SEC. 3. MILITARY PAY.**

13 (a) CORRECTION OF PAY PROBLEMS FOR ACTIVATED
14 RESERVE COMPONENT PERSONNEL.—

15 (1) REQUIREMENT FOR SENIOR LEVEL AC-
16 TION.—The Secretary of the Army shall designate a
17 senior level official of the Department of the Army
18 to implement—

19 (A) the recommendations for executive ac-
20 tion set forth in the report of the Comptroller
21 General of the United States entitled “Military
22 Pay, Army National Guard Personnel Mobilized
23 to Active Duty Experienced Significant Pay
24 Problems”, dated November 2003; and

1 (B) the recommendations for executive ac-
2 tion set forth in the report of the Comptroller
3 General of the United States entitled “Military
4 Pay, Army Reserve Soldiers Mobilized to Active
5 Duty Experienced Significant Pay Problems”,
6 dated August 2004.

7 (2) SUPERVISION BY COMPTROLLER OF DE-
8 PARTMENT OF DEFENSE.—The official designated
9 under paragraph (1) shall report directly to, and be
10 subject to the direction of, the Under Secretary of
11 Defense (Comptroller) regarding performance of the
12 duties that the official is designated to carry out
13 under such paragraph.

14 (3) TERMINATION OF REQUIREMENT.—The
15 designation under paragraph (1) shall terminate
16 upon the certification of the Under Secretary of De-
17 fense (Comptroller) to Congress that all rec-
18 ommendations referred to in such paragraph have
19 been implemented.

20 (b) REENLISTMENT BONUS FOR SELECTED RE-
21 SERVE.—

22 (1) EXPANDED ELIGIBILITY.—Subsection (a)(1)
23 of section 308b of title 37, United States Code, is
24 amended by striking “14 years” and inserting “17
25 years”.

1 (2) INCREASED MAXIMUM AMOUNT.—Sub-
 2 section (b) of such section is amended by striking
 3 “(b) BONUS AMOUNT; PAYMENT.—(1) The amount
 4 of a bonus under this section may not exceed—”
 5 and all that follows through the end of paragraph
 6 (1) and inserting the following:

7 “(b) BONUS AMOUNT.—The amount of a bonus
 8 under this section may not exceed \$10,000.”.

9 (3) OPTION TO RECEIVE LUMP-SUM PAY-
 10 MENT.—Section 308b of title 37, United States
 11 Code, is further amended—

12 (A) by striking paragraphs (1) and (2) of
 13 subsection (c); and

14 (B) in paragraph (2) of subsection (b)—
 15 (i) by striking “(2) Any bonus payable
 16 under this section” and inserting the fol-
 17 lowing:

18 “(c) PAYMENT IN LUMP SUM OR INSTALLMENTS.—
 19 (1) A bonus payable to a member under this section shall
 20 be paid, upon the election of the member, in one lump
 21 sum or in partial payments under paragraph (2).

22 “(2) Any bonus payable in partial payments under
 23 this section”.

24 (4) REDESIGNATION OF PROVISIONS.—Such
 25 section is further amended—

1 (A) by redesignating subsections (d), (e),
 2 and (f), as subsections (e), (f), and (g), respec-
 3 tively; and

4 (B) in subsection (c)(3)—

5 (i) by striking “(3) In the case of”
 6 and inserting “(d) PERSONNEL IN CER-
 7 TAIN CONTINGENCY OPERATIONS.—In the
 8 case of”; and

9 (ii) by striking “paragraph (1)(B)
 10 or”.

11 **SEC. 4. TRICARE FOR RESERVE COMPONENT PERSONNEL.**

12 (a) EXPANDED ELIGIBILITY OF READY RESERVE
 13 MEMBERS UNDER TRICARE PROGRAM.—

14 (1) UNCONDITIONAL ELIGIBILITY.—Subsection
 15 (a) of section 1076b of title 10, United States Code,
 16 is amended by striking “is eligible, subject to sub-
 17 section (h), to enroll in TRICARE” and all that fol-
 18 lows through “an employer-sponsored health benefits
 19 plan” and inserting “, except for a member who is
 20 enrolled or is eligible to enroll in a health benefits
 21 plan under chapter 89 of title 5, is eligible to enroll
 22 in TRICARE, subject to subsection (h)”.

23 (2) PERMANENT AUTHORITY.—Subsection (l) of
 24 such section is repealed.

1 (3) CONFORMING REPEAL OF OBSOLETE PROVI-
2 SIONS.—Such section is further amended—

3 (A) by striking subsections (i) and (j); and

4 (B) by redesignating subsection (k) as sub-
5 section (i).

6 (b) CONTINUATION OF NON-TRICARE HEALTH
7 BENEFITS PLAN COVERAGE FOR CERTAIN RESERVES
8 CALLED OR ORDERED TO ACTIVE DUTY AND THEIR DE-
9 PENDENTS.—

10 (1) REQUIRED CONTINUATION.—

11 (A) REQUIREMENT.—Chapter 55 of title
12 10, United States Code, is amended by insert-
13 ing after section 1078a the following new sec-
14 tion:

15 **“§ 1078b. Continuation of non-TRICARE health bene-**
16 **fits plan coverage for dependents of cer-**
17 **tain Reserves called or ordered to active**
18 **duty**

19 “(a) PAYMENT OF PREMIUMS.—The Secretary con-
20 cerned shall pay the applicable premium to continue in
21 force any qualified health benefits plan coverage for the
22 members of the family of an eligible reserve component
23 member for the benefits coverage continuation period if
24 timely elected by the member in accordance with regula-
25 tions prescribed under subsection (j).

1 “(b) ELIGIBLE MEMBER; FAMILY MEMBERS.—(1) A
2 member of a reserve component is eligible for payment of
3 the applicable premium for continuation of qualified
4 health benefits plan coverage under subsection (a) while
5 serving on active duty pursuant to a call or order issued
6 under a provision of law referred to in section
7 101(a)(13)(B) of this title during a war or national emer-
8 gency declared by the President or Congress.

9 “(2) For the purposes of this section, the members
10 of the family of an eligible reserve component member in-
11 clude only the member’s dependents described in subpara-
12 graphs (A), (D), and (I) of section 1072(2) of this title.

13 “(c) QUALIFIED HEALTH BENEFITS PLAN COV-
14 ERAGE.—For the purposes of this section, health benefits
15 plan coverage for the members of the family of a reserve
16 component member called or ordered to active duty is
17 qualified health benefits plan coverage if—

18 “(1) the coverage was in force on the date on
19 which the Secretary notified the reserve component
20 member that issuance of the call or order was pend-
21 ing or, if no such notification was provided, the date
22 of the call or order;

23 “(2) on such date, the coverage applied to the
24 reserve component member and members of the fam-
25 ily of the reserve component member; and

1 “(3) the coverage has not lapsed.

2 “(d) APPLICABLE PREMIUM.—The applicable pre-
3 mium payable under this section for continuation of health
4 benefits plan coverage for the family members of a reserve
5 component member is the amount of the premium payable
6 by the member for the coverage of the family members.

7 “(e) MAXIMUM AMOUNT.—The total amount that the
8 Department of Defense may pay for the applicable pre-
9 mium of a health benefits plan for the family members
10 of a reserve component member under this section in a
11 fiscal year may not exceed the amount determined by mul-
12 tipling—

13 “(1) the sum of one plus the number of the
14 family members covered by the health benefits plan,
15 by

16 “(2) the per capita cost of providing TRICARE
17 coverage and benefits for dependents under this
18 chapter for such fiscal year, as determined by the
19 Secretary of Defense.

20 “(f) BENEFITS COVERAGE CONTINUATION PE-
21 RIOD.—The benefits coverage continuation period under
22 this section for qualified health benefits plan coverage for
23 the family members of an eligible reserve component mem-
24 ber called or ordered to active duty is the period that—

25 “(1) begins on the date of the call or order; and

1 “(2) ends on the earlier of—

2 “(A) the date on which the reserve compo-
3 nent member’s eligibility for transitional health
4 care under section 1145(a) of this title termi-
5 nates under paragraph (3) of such section; or

6 “(B) the date on which the reserve compo-
7 nent member elects to terminate the continued
8 qualified health benefits plan coverage of the
9 member’s family members.

10 “(g) EXTENSION OF PERIOD OF COBRA COV-
11 ERAGE.—Notwithstanding any other provision of law—

12 “(1) any period of coverage under a COBRA
13 continuation provision (as defined in section
14 9832(d)(1) of the Internal Revenue Code of 1986)
15 for an eligible reserve component member under this
16 section shall be deemed to be equal to the benefits
17 coverage continuation period for such member under
18 this section; and

19 “(2) with respect to the election of any period
20 of coverage under a COBRA continuation provision
21 (as so defined), rules similar to the rules under sec-
22 tion 4980B(f)(5)(C) of such Code shall apply.

23 “(h) NONDUPLICATION OF BENEFITS.—A member of
24 the family of a reserve component member who is eligible
25 for benefits under qualified health benefits plan coverage

1 paid on behalf of the reserve component member by the
 2 Secretary concerned under this section is not eligible for
 3 benefits under the TRICARE program during a period of
 4 the coverage for which so paid.

5 “(i) REVOCABILITY OF ELECTION.—A reserve com-
 6 ponent member who makes an election under subsection
 7 (a) may revoke the election. Upon such a revocation, the
 8 member’s family members shall become eligible for bene-
 9 fits under the TRICARE program as provided for under
 10 this chapter.

11 “(j) REGULATIONS.—The Secretary of Defense shall
 12 prescribe regulations for carrying out this section. The
 13 regulations shall include such requirements for making an
 14 election of payment of applicable premiums as the Sec-
 15 retary considers appropriate.”.

16 (B) CLERICAL AMENDMENT.—The table of
 17 sections at the beginning of such chapter is
 18 amended by inserting after the item relating to
 19 section 1078a the following new item:

“1078b. Continuation of non-TRICARE health benefits plan coverage for de-
 pendants of certain Reserves called or ordered to active duty.”.

20 (2) APPLICABILITY.—Section 1078b of title 10,
 21 United States Code (as added by paragraph (1)),
 22 shall apply with respect to calls or orders of mem-
 23 bers of reserve components of the Armed Forces to
 24 active duty as described in subsection (b) of such

1 section, that are issued by the Secretary of a military
 2 department before, on, or after the date of the enact-
 3 ment of this Act, but only with respect to qualified
 4 health benefits plan coverage (as described in sub-
 5 section (c) of such section) that is in effect on or after
 6 the date of the enactment of this Act.

7 **SEC. 5. CHILD CARE FOR CHILDREN OF MEMBERS OF**
 8 **ARMED FORCES ON ACTIVE DUTY FOR OPER-**
 9 **ATION ENDURING FREEDOM OR OPERATION**
 10 **IRAQI FREEDOM.**

11 (a) CHILD CARE FOR CHILDREN WITHOUT ACCESS
 12 TO MILITARY CHILD CARE.—

13 (1) AUTHORITY.—In any case where the chil-
 14 dren of a covered member of the Armed Forces are
 15 geographically dispersed and do not have practical
 16 access to a military child development center, the
 17 Secretary of Defense may, to the extent funds are
 18 available for such purpose, provide such funds as are
 19 necessary permit the member's family to secure ac-
 20 cess for such children to State licensed child care
 21 and development programs and activities in the pri-
 22 vate sector that are similar in scope and quality to
 23 the child care and development programs and activi-
 24 ties the Secretary would otherwise provide access to

1 under subchapter II of chapter 88 of title 10, United
2 States Code, and other applicable provisions of law.

3 (2) PROCEDURES.—Funds may be provided
4 under paragraph (1) in accordance with the provi-
5 sions of section 1798 of title 10, United States
6 Code, or by such other mechanism as the Secretary
7 considers appropriate.

8 (3) PRIORITIES.—The Secretary shall prescribe
9 in regulations priorities for the allocation of funds
10 for the provision of access to child care under para-
11 graph (1) in circumstances where funds are inad-
12 equate to provide all children described in that para-
13 graph with access to child care as described in that
14 paragraph.

15 (b) PRESERVATION OF SERVICES AND PROGRAMS.—
16 The Secretary shall provide for the attendance and partici-
17 pation of children in military child development centers
18 and child care and development programs and activities
19 under subsection (a) in a manner that preserves the scope
20 and quality of child care and development programs and
21 activities otherwise provided by the Secretary.

22 (c) FUNDING.—Amounts otherwise available to the
23 Department of Defense and the military departments
24 under this Act may be available for purposes of providing
25 access to child care under subsection (a).

1 (d) DEFINITIONS.—In this section:

2 (1) COVERED MEMBERS OF THE ARMED
3 FORCES.—The term “covered members of the Armed
4 Forces” means members of the Armed Forces on ac-
5 tive duty, including members of the Reserves who
6 are called or ordered to active duty under a provi-
7 sion of law referred to in section 101(a)(13)(B) of
8 title 10, United States Code, for Operation Endur-
9 ing Freedom or Operation Iraqi Freedom.

10 (2) MILITARY CHILD DEVELOPMENT CENTER.—
11 The term “military child development center” has
12 the meaning given such term in section 1800(1) of
13 title 10, United States Code.

14 **SEC. 6. RIGHTS AND DUTIES UNDER USERRA.**

15 (a) REQUIREMENT FOR EMPLOYERS TO PROVIDE
16 NOTICE OF RIGHTS AND DUTIES UNDER USERRA.—

17 (1) NOTICE.—

18 (A) REQUIREMENT FOR NOTICE.—Chapter
19 43 of title 38, United States Code, is amended
20 by adding at the end the following new section:

21 **“§ 4334. Notice of rights and duties**

22 “(a) REQUIREMENT TO PROVIDE NOTICE.—Each
23 employer shall provide to persons entitled to rights and
24 benefits under this chapter a notice of the rights, benefits,
25 and obligations of such persons and such employers under

1 this chapter. The requirement for the provision of notice
 2 under this section may be met by the posting of the notice
 3 where employers customarily place notices for employees.

4 “(b) CONTENT OF NOTICE.—The Secretary shall
 5 provide to employers the text of the notice to be provided
 6 under this section.”.

7 (B) CLERICAL AMENDMENT.—The table of
 8 sections at the beginning of such chapter is
 9 amended by adding at the end the following
 10 new item:

“4334. Notice of rights and duties.”.

11 (2) IMPLEMENTATION.—

12 (A) REQUIREMENT.—Not later than the
 13 date that is 90 days after the date of the enact-
 14 ment of this Act, the Secretary of Labor shall
 15 make available to employers the notice required
 16 under section 4334 of title 38, United States
 17 Code, as added by paragraph (1).

18 (B) APPLICABILITY.—The amendments
 19 made by this subsection shall apply to employ-
 20 ers under chapter 43 of such title on and after
 21 the first date referred to in subparagraph (A).

22 (b) DEMONSTRATION PROJECT FOR REFERRAL OF
 23 USERRA CLAIMS AGAINST FEDERAL AGENCIES TO THE
 24 OFFICE OF SPECIAL COUNSEL.—

1 (1) ESTABLISHMENT OF PROJECT.—The Sec-
2 retary of Labor and the Office of Special Counsel
3 shall carry out a demonstration project under which
4 certain claims against Federal executive agencies
5 under the Uniformed Services Employment and Re-
6 employment Rights Act under chapter 43 of title 38,
7 United States Code, are referred to, or otherwise re-
8 ceived by, the Office of Special Counsel for assist-
9 ance, including investigation and resolution of the
10 claim as well as enforcement of rights with respect
11 to the claim.

12 (2) REFERRAL OF ALL PROHIBITED PER-
13 SONNEL ACTION CLAIMS TO THE OFFICE OF SPE-
14 CIAL.—

15 (A) COVERED CLAIMS.—Under the dem-
16 onstration project, the Office of Special Counsel
17 shall receive and investigate all claims under
18 the Uniformed Services Employment and Reem-
19 ployment Rights Act with respect to Federal ex-
20 ecutive agencies in cases where the Office of
21 Special Counsel has jurisdiction over related
22 claims pursuant to section 1212 of title 5,
23 United States Code.

24 (B) RELATED CLAIMS.—For purposes of
25 subparagraph (A), a related claim is a claim in-

1 volving the same Federal executive agency and
2 the same or similar factual allegations or legal
3 issues as those being pursued under a claim
4 under the Uniformed Services Employment and
5 Reemployment Rights Act.

6 (3) REFERRAL OF OTHER CLAIMS AGAINST
7 FEDERAL EXECUTIVE.—

8 (A) OTHER CLAIMS.—Under the dem-
9 onstration project, the Secretary—

10 (i) shall refer to the Office of Special
11 Counsel all claims described in subpara-
12 graph (B) made during the period of the
13 demonstration project; and

14 (ii) may refer any claim described in
15 subparagraph (B) filed before the dem-
16 onstration project that is pending before
17 the Secretary at the beginning of the dem-
18 onstration project.

19 (B) COVERED CLAIMS.—A claim referred
20 to in subparagraph (A) is a claim under chapter
21 43 of title 38, United States Code, against a
22 Federal executive agency by a claimant with a
23 social security account number with an odd
24 number as its terminal digit, or, in the case of
25 a claim that does not contain a social security

1 account number, a case number assigned to the
2 claim with an odd number as its terminal digit.

3 (4) ADMINISTRATION OF DEMONSTRATION —

4 (A) OFFICE OF SPECIAL COUNSEL.—The
5 Office of Special Counsel shall administer the
6 demonstration project. The Secretary shall co-
7 operate with the Office of Special Counsel in
8 carrying out the demonstration project.

9 (B) LAW ADMINISTERED BY THE SEC-
10 RETARY OF VETERANS AFFAIRS.—In the case of
11 any claim referred to, or otherwise received by,
12 the Office of Special Counsel under the dem-
13 onstration project, any reference to the “Sec-
14 retary” in sections 4321, 4322, and 4326 of
15 title 38, United States Code, is deemed a ref-
16 erence to the “Office of Special Counsel”.

17 (C) RETENTION OF JURISDICTION OVER
18 REFERRED CLAIMS.—In the case of any claim
19 referred to, or otherwise received by, the Office
20 of Special Counsel under the demonstration
21 project, the Office of Special Counsel shall re-
22 tain administrative jurisdiction over the claim.

23 (5) PERIOD OF PROJECT.—The demonstration
24 project shall be carried out during the period begin-
25 ning on the date that is 60 days after the date of

1 the enactment of this Act, and ending on September
2 30, 2007.

3 (6) PERIODIC EVALUATIONS.—The Comptroller
4 General of the United States shall conduct periodic
5 evaluations of the demonstration project under this
6 subsection.

7 (7) REPORT ON EVALUATIONS.—Not later than
8 April 1, 2007, the Comptroller General shall submit
9 to Congress a report on the evaluations conducted
10 under paragraph (6). The report shall include the
11 following information and recommendations:

12 (A) A description of the operation and re-
13 sults of the demonstration program, includ-
14 ing—

15 (i) the number of claims described in
16 paragraph (3) referred to, or otherwise re-
17 ceived by, the Office of Special Counsel
18 and the number of such claims referred to
19 the Secretary of Labor; and

20 (ii) for each Federal executive agency,
21 the number of claims resolved, the type of
22 corrective action obtained, the period of
23 time for final resolution of the claim, and
24 the results obtained.

1 (B) An assessment of whether referral to
2 the Office of Special Counsel of claims under
3 the demonstration project—

4 (i) improved services to service-
5 members and veterans; or

6 (ii) significantly reduced or eliminated
7 duplication of effort and unintended delays
8 in resolving meritorious claims of those
9 servicemembers and veterans.

10 (C) An assessment of the feasibility and
11 advisability of referring all claims under chapter
12 43 of title 38, United States Code, against Fed-
13 eral executive agencies to the Office of Special
14 Counsel for investigation and resolution.

15 (D) Such other recommendations for ad-
16 ministrative action or legislation as the Comp-
17 troller General determines appropriate.

18 (8) DEFINITIONS.—In this subsection:

19 (A) OFFICE OF SPECIAL COUNSEL.—The
20 term “Office of Special Counsel” means the Of-
21 fice of Special Counsel established by section
22 1211 of title 5, United States Code.

23 (B) SECRETARY.—The term “Secretary”
24 means the Secretary of Labor.

1 (C) FEDERAL EXECUTIVE AGENCY.—The
2 term “Federal executive agency” has the mean-
3 ing given that term in section 4303(5) of title
4 38, United States Code.

5 (c) USERRA IMPLEMENTING REGULATIONS.—

6 (1) REQUIREMENT FOR REGULATIONS.—Sub-
7 sections (a) and (b)(1) of section 4331 of title 38,
8 United States Code, are amended by striking “may
9 prescribe” and inserting “shall prescribe”.

10 (2) CLARIFICATION OF RIGHT TO MERIT PAY
11 INCREASES.—The regulations prescribed for the im-
12 plementation of chapter 43 of title 38, United States
13 Code, under section 4331 of such title shall include
14 regulations that clarify that the entitlement of per-
15 sons returning to employment under such chapter to
16 receive pay increases under merit pay systems of
17 employers may not be denied on the basis of lack of
18 work performance evaluations for periods of absence
19 for active duty in the uniformed services.

20 **SEC. 7. IMPROVED EDUCATIONAL ASSISTANCE BENEFITS**
21 **FOR MEMBERS OF THE SELECTED RESERVE.**

22 (a) INCREASE IN AMOUNT OF BASIC EDUCATIONAL
23 ASSISTANCE.—

24 (1) IN GENERAL.—Section 16131(b) of title 10,
25 United States Code, is amended to read as follows:

1 “(b) Except as provided in subsections (d) through
2 (f), each educational assistance program established under
3 subsection (a) shall provide for payment by the Secretary
4 concerned, through the Secretary of Veterans Affairs, to
5 each person entitled to educational assistance under this
6 chapter who is pursuing a program of education of an edu-
7 cational assistance allowance at the following monthly
8 rates:

9 “(1) For such a program of education pursued
10 on a full-time basis, at the monthly rate equal to the
11 applicable percentage (as defined in paragraph (3))
12 of the rate that applies for the month under section
13 3015(a)(1) of title 38.

14 “(2)(A) Subject to subparagraph (B), for such
15 a program of education pursued on less than a full-
16 time basis, at an appropriately reduced rate, as de-
17 termined under regulations which the Secretaries
18 concerned shall prescribe.

19 “(B) No payment may be made to a person for
20 less than half-time pursuit of such a program of
21 education if tuition assistance is otherwise available
22 to the person for such pursuit from the military de-
23 partment concerned.

1 “(3) In this subsection, the term ‘applicable
2 percentage’ means, with respect to months occurring
3 during—

4 “(A) fiscal year 2005, 33 percent;

5 “(B) fiscal year 2006, 37 percent;

6 “(C) fiscal year 2007, 41 percent;

7 “(D) fiscal year 2008, 45 percent; and

8 “(E) fiscal year 2009, and each subsequent
9 fiscal year, 50 percent.”.

10 (2) EFFECTIVE DATE.—The amendments made
11 by paragraph (1) shall take effect on October 1,
12 2004, and shall apply with respect to educational as-
13 sistance allowances under section 16131(b) of such
14 title paid for months after September 2004.

15 (b) EXPANSION OF ELIGIBILITY REQUIREMENTS FOR
16 MEMBERS OF THE SELECTED RESERVE HAVING SERVED
17 ON ACTIVE DUTY FOR A PERIOD OF 24 NON-CONSECU-
18 TIVE MONTHS UNDER CHAPTER 30 OF TITLE 38,
19 UNITED STATES CODE.—

20 (1) CREDIT FOR 24 MONTHS OF ACTIVE DUTY
21 SERVICE OVER A PERIOD OF 5 YEARS.—Subsection
22 3012(a) of title 38, United States Code, is amended
23 in paragraphs (1)(A)(i), (1)(B)(i), and (1)(C)(iii)(I)
24 by striking “two years of continuous active duty”

1 each place it appears and inserting “a cumulative
2 period of 24 months during any 5-year period”.

3 (2) CONFORMING AMENDMENT.—Subsection (b)
4 of section 3012 of such title is amended in para-
5 graph (1) by striking “during such two years” and
6 inserting “at any time during such 5-year period”.

7 (3) EFFECTIVE DATE.—The amendments made
8 by this subsection shall apply on or after October 1,
9 2005.

10 **SEC. 8. REDUCTION IN AGE FOR RECEIPT OF MILITARY RE-**
11 **TIRED PAY FOR NONREGULAR SERVICE.**

12 (a) REDUCTION IN AGE.—Section 12731(a)(1) of
13 title 10, United States Code, is amended by striking “at
14 least 60 years of age” and inserting “at least 55 years
15 of age”.

16 (b) APPLICATION TO EXISTING PROVISIONS OF LAW
17 OR POLICY.—With respect to any provision of law, or of
18 any policy, regulation, or directive of the executive branch,
19 that refers to a member or former member of the uni-
20 formed services as being eligible for, or entitled to, retired
21 pay under chapter 1223 of title 10, United States Code,
22 but for the fact that the member or former member is
23 under 60 years of age, such provision shall be carried out
24 with respect to that member or former member by sub-
25 stituting for the reference to being 60 years of age a ref-

1 erence to the age in effect for qualification for such retired
 2 pay under section 12731(a) of title 10, United States
 3 Code, as amended by subsection (a).

4 (c) EFFECTIVE DATE.—The amendment made by
 5 subsection (a) shall take effect on the first day of the first
 6 month beginning on or after the date of the enactment
 7 of this Act and shall apply to retired pay payable for that
 8 month and subsequent months.

9 **SEC. 9. DEPUTY UNDER SECRETARY OF DEFENSE FOR PER-**
 10 **SONNEL AND READINESS (RESERVE AF-**
 11 **FAIRS).**

12 (a) ESTABLISHMENT OF POSITION.—

13 (1) POSITION AND DUTIES.—Chapter 4 of title
 14 10, United States Code, is amended by inserting
 15 after section 136a the following new section:

16 **“§ 136b. Deputy Under Secretary of Defense for Per-**
 17 **sonnel and Readiness (Reserve Affairs)**

18 “(a) There is a Deputy Under Secretary of Defense
 19 for Personnel and Readiness (Reserve Affairs), appointed
 20 from civilian life by the President, by and with the advice
 21 and consent of the Senate.

22 “(b) The Deputy Under Secretary of Defense for Per-
 23 sonnel and Readiness (Reserve Affairs) shall have as his
 24 principal duty the overall supervision of reserve component
 25 affairs of the Department of Defense.”.

1 (2) CLERICAL AMENDMENT.—The table of sec-
 2 tions at the beginning of such chapter is amended
 3 by inserting after the item relating to section 136a
 4 the following new item:

“136b. Deputy Under Secretary of Defense for Personnel and Readiness (Re-
 serve Affairs).”.

5 (b) EXECUTIVE LEVEL IV.—Section 5315 of title 5,
 6 United States Code, is amended by inserting after “Dep-
 7 uty Under Secretary of Defense for Personnel and Read-
 8 iness.” the following:

9 “Deputy Under Secretary of Defense for Per-
 10 sonnel and Readiness (Reserve Affairs).”.

11 (c) ELIMINATION OF POSITION OF ASSISTANT SEC-
 12 RETARY OF DEFENSE FOR RESERVE AFFAIRS.—

13 (1) REPEAL OF REQUIREMENT FOR POSI-
 14 TION.—Subsection (b) of section 138 of title 10,
 15 United States Code, is amended—

16 (A) by striking paragraph (2); and

17 (B) by redesignating paragraphs (3), (4),
 18 and (5), as paragraphs (2), (3), and (4), re-
 19 spectively.

20 (2) REDUCTION IN TOTAL NUMBER OF ASSIST-
 21 ANT SECRETARIES OF DEFENSE.—

22 (A) AUTHORIZED NUMBER.—Subsection
 23 (a) of such section is amended by striking
 24 “nine” and inserting “eight”.

1 (B) CONFORMING AMENDMENT.—Section
2 5315 of title 5, United States Code, is amended
3 by striking “(9)” after “Assistant Secretaries of
4 Defense” and inserting “(8)”.

5 (d) EFFECTIVE DATE.—The amendments made by
6 subsection (c) shall take effect on the date on which a
7 person is first appointed as Deputy Under Secretary of
8 Defense for Personnel and Readiness (Reserve Affairs).

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