



PERSONNEL AND  
READINESS

**UNDER SECRETARY OF DEFENSE**  
4000 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-4000

JUL 22 2014

The Honorable Joseph R. Biden, Jr.  
President of the Senate  
United States Senate  
Washington, DC 20510

Dear Mr. President:

This letter provides notification as required by title 10, U.S.C., section 652 that the Department of Defense (DoD) intends to open the skill identifier associated with attending the Bradley Infantry Fighting Vehicle Commander's Course, which is currently closed to women. The enclosure provides a detailed description of the intended change and the required analysis of the impact on the constitutionality of the application of the Military Selective Service Act to males only. DoD will implement changes to the skill identifier and associated course listed in the enclosure at the end of 30 days of continuous session of Congress (excluding any day on which either House of Congress is not in session) following the date this notification is received.

This skill identifier was previously closed due to the now-rescinded 1994 Direct Ground Combat Definition and Assignment Rule. The Department of the Army has reviewed the requirements associated with this skill identifier and the Bradley Infantry Fighting Vehicle Commander's Course and have determined they are gender-neutral. The performance of women in this skill identifier and the Bradley Infantry Fighting Vehicle Commander's Course will help inform future policy decisions regarding the assignment of women to all positions by January 1, 2016.

The DoD appreciates your continued support of the extraordinary men and women serving our Nation. A similar letter is being sent to the Speaker of the House and the Chairpersons of the congressional defense committees.

Sincerely,

  
Jessica L. Wright

Enclosure:  
As stated



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The Honorable John A. Boehner  
Speaker of the House  
U.S. House of Representatives  
Washington, DC 20515

JUL 22 2014

Dear Mr. Speaker:

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The Honorable Carl Levin  
Chairman  
Committee on Armed Services  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

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Jessica L. Wright

Enclosure:  
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cc:  
The Honorable James M. Inhofe  
Ranking Member



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WASHINGTON, D.C. 20301-4000

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The Honorable Howard P. "Buck" McKeon  
Chairman  
Committee on Armed Services  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

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Jessica L. Wright

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cc:  
The Honorable Adam Smith  
Ranking Member



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WASHINGTON, D.C. 20301-4000

The Honorable Barbara A. Mikulski  
Chairwoman  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

JUL 22 2014

Dear Madam Chairwoman:

This letter provides notification as required by title 10, U.S.C., section 652 that the Department of Defense (DoD) intends to open the skill identifier associated with attending the Bradley Infantry Fighting Vehicle Commander's Course, which is currently closed to women. The enclosure provides a detailed description of the intended change and the required analysis of the impact on the constitutionality of the application of the Military Selective Service Act to males only. DoD will implement changes to the skill identifier and associated course listed in the enclosure at the end of 30 days of continuous session of Congress (excluding any day on which either House of Congress is not in session) following the date this notification is received.

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Jessica L. Wright

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cc:  
The Honorable Richard C. Shelby  
Vice Chairman



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The Honorable Harold Rogers  
Chairman  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

JUL 22 2014

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Jessica L. Wright

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cc:  
The Honorable Nita M. Lowey  
Ranking Member

## **Bradley Infantry Fighting Vehicle Commander's Course**

Trains newly assigned Officers (Second Lieutenant through Captain) and NCOs (Staff Sergeant to Sergeant Major) serving in a Bradley Fighting Vehicle (BFV) leadership position. This course will train new Officers and NCOs on how to assume a vehicle commander position. This course will assist commanders in achieving full operational capability in the shortest time practical by training and certifying students on the BFV system and providing unit commanders with training needed to sustain tactical and technical proficiency.

## Detailed Legal Analysis

This notification informs Congress of the Army's intent to open the 3X Bradley Infantry Fighting Vehicle Commander's Course skill identifier course to women. The Army recently opened up field artillery officer (13A) positions to women and this notification provides the requisite skill identifier to females occupying those positions upon successful completion of the course.

The skill identifier and associated course were closed to women under the now-rescinded 1994 Direct Ground Combat Definition and Assignment Rule which prohibited the assignment of women to units below the brigade level whose primary mission was to engage in direct combat on the ground.

### Military Selective Service Act to males only.

The Military Selective Service Act (Act), 50 U.S.C. App. 451 *et seq.*, requires the registration for possible military service of males but not females. The purpose of the registration is to facilitate induction and training in the Armed Forces.

In *Rostker v. Goldberg*, 453 U.S. 57 (1981), the United States Supreme Court considered the constitutionality of the male-only draft under the Act and upheld the Act. The Court held that the Act's male-only registration provisions did not violate the Fifth Amendment to the United States Constitution because women, who were excluded from combat by statute or military policy, were not similarly situated to men for the purpose of a draft or registration, and that Congress acted within its constitutional authority to raise and regulate armies and navies when it authorized the registration of men and not women. The Court stated its "most recent teachings in the field of equal protection cannot be read in isolation from its opinions giving great deference to the judgment of Congress and military commanders in dealing [with] the management of military forces and the requirements of military discipline." *Id.* at 69.

In *Rostker*, the Court recognized that the decision by Congress to exclude women from the registration requirement was not the "accidental by-product of a traditional way of thinking about females" but rather was the subject of considerable national attention and public debate, and was extensively considered by Congress in hearings, floor debates, and in committee. *Id.* at 71. The Court deferred to Congress' explanation that "[i]f mobilization were to be ordered in a wartime scenario, the primary manpower need would be for combat replacements." Additionally, the Court noted that women were not similarly situated to men for purposes of the Act because of their exclusion from assignments to certain units whose primary mission is to engage in direct combat on the ground.

Since the *Rostker* decision, sections 8539 and 6015, of title 10, U.S.C. (prohibiting the assignment of women to aircraft engaged in combat and vessels engaged in combat, respectively), have been repealed. On January 24, 2013, the Department rescinded its 1994

Direct Ground Combat Definition and Assignment Rule, which prohibited the assignment of women to certain units and positions. The rescission of the policy did not automatically open all previously closed positions to women, but rather effectively removed the last policy barrier to the assignment of women to ground combat positions and units. In rescinding the 1994 policy, the Department established a way forward, using the guiding principles and milestones developed by the Joint Chiefs of Staff, to integrate women into all currently closed positions as expeditiously as possible, considering good order and judicious use of fiscal resources, no later than January 1, 2016. As the Department undertakes a deliberate and thoughtful review and develops detailed implementation plans, previously closed positions will open unless an exception is granted to keep an occupational specialty or position closed. Opening all positions without a deliberate and thoughtful approach could be detrimental to mission accomplishment and impede the ability of men and women to succeed in their positions.

Since this notification does not open additional units or positions to women but rather provides for a skill identifier to be associated with a position already opened to women, this notification does not have any material implications with respect to the constitutionality of the application of the Military Selective Service Act to males only. Additionally, while the opening of additional positions to women may alter the factual backdrop to the Court's decision in *Rostker*, it remains the case that certain positions still remain closed to women. Moreover, the Court in *Rostker* did not consider whether other rationales underlying the statute are sufficient to limit the application of the Military Selective Service Act to men.