



# U.S. Military Stop Loss Program: Key Questions and Answers

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## Summary

Stop Loss is a frequently misunderstood DOD force management program that retains servicemembers beyond their contractually agreed-to separation date. Because of the involuntary nature of this extension, some critics have referred to the program as a “backdoor draft” or “involuntary servitude”.

Stop Loss was initially used in the 1990-91 Persian Gulf War and later in Bosnia and the Kosovo Air Campaign. All of the Services used Stop Loss at the beginning of Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) but only the Army has consistently employed some form of Stop Loss over the past nine years. Today, there are nearly 8,000 soldiers in the Active Army, Army Reserve and Army National Guard who remain on active duty beyond their scheduled separation date as a result of Stop Loss. While many observers tend to sympathize with those in Stop Loss status, others assert that every servicemember who has enlisted or reenlisted over the past several years has been made aware of the program.

The authority for Stop Loss has existed since 1984 (Section 12305, Title 10) and enables the President to suspend the laws relating to promotion, retirement and separation during periods of national emergency or a Presidential call-up of the reserve components. Minor changes to the Stop Loss program were enacted in 2002 and 2006 but a more significant change was directed by P.L. 110-329, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009. This legislation established and temporarily funded a new special pay, up to a maximum of \$500 per month for all servicemembers extended by Stop Loss during FY2009. This special pay was later extended to June 30, 2011 by the National Defense Authorization Act for FY2010.

The Stop Loss Special Pay was criticized because it applied only to those in Stop Loss status during FY2009 and beyond and did not address the nearly 185,000 members who had been Stop Lossed since September 11, 2001. This was changed by the FY2009 Supplemental, P.L. 111-32, which extended the special pay back to September 11, 2001, still at the rate of \$500 per month. Servicemembers are required to apply to their parent service and upon validation will receive a lump sum Retroactive Stop Loss payment. The application period ends on October 21, 2010.

In January, 2007 the newly appointed Secretary of Defense Gates directed the Services to minimize the use of Stop Loss. The Army has consistently argued that Stop Loss is necessary to ensure that only trained and ready units are deployed to Iraq and Afghanistan. However, Secretary of Defense Gates announced on March 18, 2009, the phased suspension of the Stop Loss program. The Army’s active component program ended on January 1, 2010 while the Army Reserve and Army National Guard programs ended in August and September, 2009, respectively. While the Services will retain the legal authority for Stop Loss, the Secretary of Defense decision phased out the regular use of Stop Loss for Iraq and Afghanistan.

With Stop Loss suspended, all three Army components (Active, Guard, and Reserve) have implemented financial incentive programs to encourage volunteers to remain with their units during a deployment. This pay, generally referred to as Deployment Extension Incentive Pay (DEIP) varies in amount by component but is tax-free if earned in a combat zone.

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## **Introduction**

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Stop Loss was initially used in the 1990-91 Persian Gulf War and later in Bosnia and the Kosovo Air Campaign. All of the Services used Stop Loss at the beginning of Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) but only the Army has consistently employed some form of Stop Loss over the past nine years. Today, there are nearly 8,000 soldiers in the Active Army, Army Reserve and Army National Guard who remain on active duty beyond their scheduled separation date as a result of Stop Loss. While many observers tend to sympathize with those in Stop Loss status, others assert that every servicemember who has enlisted or reenlisted over the past several years has been made aware of the program.

## **What Is Stop Loss?**

Stop Loss is a force management program that involuntarily extends or retains active duty enlisted servicemembers beyond their established separation date. In the case of reserve component personnel called to active duty in support of OIF or OEF, Stop Loss involuntarily continues these members on active duty throughout their scheduled mobilization. Officers, on the other hand, do not have established separation dates and are generally able to serve for indefinite periods. As a result, Stop Loss only applies to officers who have an approved retirement or resignation, which can then be denied or postponed until completion of the deployment.

There are two variations of Stop Loss: Skill-based and Unit-based Stop Loss. Skill-based Stop Loss retains selected personnel with critical skills. For example, in the early stages of OIF, Skill-based Stop Loss was employed to retain special operations and aviation personnel that were determined to be critical to military operations. Unit-based Stop Loss, on the other hand, is used to maintain unit strength, enhance unit integrity and maintain cohesion for units deploying to OIF/OEF by retaining those who might otherwise separate before, during or immediately after the deployment. As a general rule, if a servicemember is assigned to a unit that is alerted to deploy and his or her term of service will end during the deployment or 90 days prior to the deployment, their active duty period will be involuntarily extended to a point in time up to 90 days after the deployment ends.

A complementary program frequently associated with Stop Loss is Stop Movement. Stop Movement precludes the loss of unit personnel from a deploying unit due to reassignment orders to another unit. Under Stop Movement, these orders will be rescinded and the individual will remain in the unit through the deployment cycle. While Stop Movement originally applied to all assigned personnel in a deploying unit, exceptions have emerged over the past several years. For example, Army soldiers being reassigned to Drill Sergeant or Recruiter duty, personnel selected for schools such as Officer Candidate School (OCS), Special Operations accessions courses and Army Medical Department schools are exempt from Stop Movement.

Since the beginning of OEF/OIF, the Services have used various combinations of unit and skill based Stop Loss and Stop Movement to address personnel shortfalls and to sustain the personnel

readiness of deploying units. The Army has relied almost exclusively on Unit-based Stop Loss for the past several years.

## **What Is the Military Obligation for Servicemembers?**

Individuals enlisting in the armed forces, active and reserve component<sup>1</sup>, are contractually obligated to an eight-year service requirement called the Military Service Obligation (MSO). This obligation is stipulated on their enlistment contract. Those enlisting for active duty for the first time will generally commit to a two to six year active duty obligation. Following separation from active duty, the remainder of the MSO may be served in the Selected Reserve<sup>2</sup> or Individual Ready Reserve (IRR)<sup>3</sup>.

For those directly joining the Reserve Component, a variety of options are available but all generally include a specified period of duty in the Selected Reserve followed by a period in the IRR until completion of the MSO. Reserve component personnel, to include those in the IRR, are subject to a call to active duty under statutory authority and have been used extensively in support of combat operations in Iraq and Afghanistan.

Servicemembers who reenlist or extend beyond their initial or subsequent enlistment will also have a separation date. Similar to the initial enlistment, the reenlistment period generally ranges from two to six years. Those who decide to separate rather than reenlist are required to sign a declination statement confirming their intent but may still be retained by Stop Loss.

Officer personnel also have an eight-year Military Service Obligation and generally have an active duty service obligation of three to five years depending on their source of commission. They may voluntarily remain in their military component as long as they meet promotion requirements. Officers deciding to separate are required to serve the remainder of their MSO in the Selected Reserve or IRR. While officers do not have a firm separation date, they can be subject to Stop Loss if a voluntary resignation or retirement application has been submitted.

## **What Is the Authority for Stop Loss?**

The term “Stop Loss” is not specifically mentioned in law but is derived from 10 U.S.C. 12305 which states, in part:

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<sup>1</sup> The term “reserve component” refers to the seven individual reserve components of the armed forces: the Army and Air National Guard, the Army Reserve, the Navy Reserve, the Marine Corps Reserve, the Air Force Reserve and the Coast Guard Reserve.

<sup>2</sup> Also frequently referred to as “drilling reservists,” members of the Selected Reserve are assigned to units and generally perform one weekend of training each month (the weekend “drill”) and two weeks of training each year (also know as “annual training”). Additional information on Reserve Component personnel matters can be found in CRS Report RL30802, *Reserve Component Personnel Issues: Questions and Answers*, by Lawrence Kapp.

<sup>3</sup> The IRR is a manpower pool of trained military personnel who have no unit affiliation and few, if any, military requirements. They can be involuntarily ordered to active duty under a Presidential Reserve Call Up, a Partial Mobilization, or a Full Mobilization.

...during any period members of a reserve component are serving on active duty pursuant to an order to active duty under authority of section 12301, 12302, or 12304 of this title, the President may suspend any provision of law relating to the promotion, retirement, or separation applicable to any member of the armed forces who the President determines is essential to the national security of the United States.

Section 12305 was added to Title 10 by the Department of Defense Authorization Act of 1984.<sup>4</sup> The legislative history of this section reveals that Congress, following the Vietnam War and the military's transition to a volunteer force, was concerned about the effectiveness of the President's authority in the event of war or national emergency. To be able to respond to a crisis or to present a credible deterrent, a provision was believed necessary that would prevent the loss of both regular and reserve personnel who became eligible to separate or retire during a crisis. Therefore, the broad authority of this provision allows the President to extend the enlistment or appointment of essential personnel serving on active duty, reserve personnel who have been called to active duty, and non-mobilized reserve component personnel, if necessary.

In preparation for the Persian Gulf War, President George H. W. Bush, in 1990, delegated his authority under Section 12305 to the Secretary of Defense by Executive Order 12728.<sup>5</sup> This delegation authorized the Secretary to suspend the laws regarding promotion, retirement and separation and to further delegate this authority to subordinates appointed by the President. This delegation has continued in effect to the present day.

In response to the attacks of September 11, 2001, President George W. Bush proclaimed a national emergency on September 14, 2001<sup>6</sup> and issued Executive Order 13223<sup>7</sup> to order the Ready Reserve to active duty for not more than 24 consecutive months. This proclamation remains in effect today. With the reserves ordered to active duty and the proclamation of a national emergency, the Secretary of Defense can approve implementation of programs such as Stop Loss. On November 9, 2001, the Secretary of Defense further delegated his authority under Section 12305 to the Service Secretaries.

There is currently no Department of Defense (DOD) policy guidance such as an Instruction or Directive that addresses the Stop Loss program. However, the courts have consistently held that Stop Loss is a valid exercise of Presidential power that is authorized by 10 U.S.C. 12305, that it comports with the requirements of the Fifth Amendment's Due Process clause, and that it is a proper delegation of Congressional power.<sup>8</sup>

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<sup>4</sup> Section 1021, P.L. 98-94, September 24, 1983.

<sup>5</sup> Executive Order 12728, *Delegating the President's Authority to Suspend and Provisions of Law Relating to Promotion, Retirement, or Separation of Members of the Armed Forces*, August 22, 1990.

<sup>6</sup> A Proclamation by the President of the United States of America, *Declaration of National Emergency by Reason of Certain Terrorist Attacks*, September 14, 2001.

<sup>7</sup> Executive Order 13223, *Ordering the Ready Reserve of the Armed Forces to Active Duty, and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation*, September 14, 2001.

<sup>8</sup> According to R. Chuck Mason of CRS' American Law Division, *Santiago v. Rumsfeld* (425F.3d 549) held that Stop Loss did not exceed the President's statutory authority and *Doe v. Rumsfeld* (435F.3d 980) held that Stop Loss is a valid exercise of presidential power authorized by 10 U.S.C. 12305, it comports with the Fifth Amendment's Due Process Clause and is a proper delegation of congressional power.

## How Has Stop Loss Been Used By the Services?

Stop Loss was first used during the 1990-1991 Gulf War where it was initially applied to all deployed personnel and later to selected individuals with critical skills. It was also used at the beginning of the Bosnia deployment and during the Kosovo Air Campaign. However, the use of Stop Loss in OIF/OEF represents a much longer term use of the program with an ongoing impact on tens of thousands of servicemembers and their families. The following summarizes the use of Stop Loss during OIF/OEF<sup>9</sup> by service:

### Army

The Army, the largest service and with the most servicemembers deployed to OIF/OEF, has used Stop Loss extensively and across all three components—active Army, Army Reserve and Army National Guard. It is also the only service that continued to use its Stop Loss authority until officially suspended by the Secretary of Defense. A table depicting the number of Stop Loss soldiers, by month and component, is at **Appendix A**.

In the initial stages of Operation Enduring Freedom, the Army used a skill-based program for selected critical skills—Special Operations, Aviation, Military Intelligence, Military Police and Civil Affairs/Psychological Operations. This program was later modified to limit the Stop Loss period to no more than 12 months for all soldiers. The Army National Guard and Army Reserve, on the other hand, adopted a unit-based program that precluded separation or retirement from the time the unit was alerted for mobilization to 90 days following the redeployment.

In preparation for Operation Iraqi Freedom, all Army components instituted a unit-based program that retained soldiers from the time of the unit's deployment or mobilization date minus 90 days through the redeployment or demobilization date plus a maximum of 90 days. This 90 day period following redeployment or demobilization is designed for transition activities to better prepare the individual for reintegration into the civilian environment.

The Army briefly terminated its unit-based Stop Loss program in mid-2003 and instituted a skill-based program impacting approximately 25 job skills, commonly referred to as Military Occupational Specialties (MOS). However, in late 2003 the Army reinstated the unit-based program that continued until Stop Loss was recently suspended by the Secretary of Defense. As a result, the Army's active and reserve components all currently have the same unit-based Stop Loss program. The primary purpose of unit-based Stop Loss is to provide trained, ready and cohesive units to OIF and OEF.

As implemented by the Army, Stop Loss applies to both deployable and non-deployable personnel in a deploying unit. Non-deployable personnel are normally assigned to the unit's rear detachment. As a result, a soldier with a temporary non-deployable medical condition would still be subject to Stop Loss if the unit was alerted for deployment. Those in Stop Loss status remained eligible for promotion and school selection.

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<sup>9</sup> A chronological summary of Stop Loss actions by service and the occupational specialties from 2001 to 2003 that were impacted can be found in Appendix VI: Service Stop-Loss Policies since September 11, 2001 in GAO Report 04-1031, *Military Personnel: DOD Needs to Address Long-term Reserve Force Availability and Related Mobilization and Demobilization Issues*, September 15, 2004.

## Navy

The Navy implemented a skill-based Stop Loss program for the first year of OEF. Due to the unknown nature of the operational requirements, the number of critical skills initially identified to support the contingency was overstated. This group included special operations, explosive ordnance disposal, security, physicians, nurses, linguists and cryptologic personnel. Originally, over 10,000 officers and enlisted personnel were identified as possessing these critical skills.

The initial program was rescinded in 2001; but was followed approximately six months later with a more targeted program to retain hospital corpsmen in support of the Marine Corps. This program initially identified approximately 2,600 personnel but the program only lasted for one month and actually affected fewer than 100 sailors. The Navy voluntarily halted its Stop Loss program in August 2002. It did not reinstate the program for OIF.

The Navy did not conduct monthly accounting of the numbers of personnel impacted by Stop Loss. Consequently neither the numbers of personnel impacted by the program during any given month nor the average length of time individuals were affected by the program are readily available.

## Air Force

The Air Force's use of Stop Loss occurred during the initial stages of OIF, from March through June 2003. The Air Force initially targeted 43 officers and 56 enlisted high-demand career fields which affected 6,172 active duty officers, 4,858 active duty enlisted, 834 Guard and Reserve officers, and 3,030 Guard and Reserve enlisted members.<sup>10</sup>

## Marine Corps

The Secretary of the Navy authorized the Marine Corps Stop Loss program in early 2002. This unit-based program affected fewer than 10,000 Marines and lasted for five months. It was followed by a highly selective program that was implemented in two phases. The first phase was used to stabilize the personnel assigned to a newly formed anti-terrorism brigade and impacted approximately 560 Marines. The second phase only included Marines assigned to C-130 aircrew positions. The Marine Corps ended its Stop Loss program in May 2003.

While its program was in effect, the Marine Corps was the only service to grant individual exemptions to Stop Loss. Under their policy, the first General Officer in a Marine's chain of command could exempt a Marine from Stop Loss.

## DOD's Policy Changes

Shortly after being confirmed as Secretary of Defense, Robert M. Gates tasked the services with minimizing the use of Stop Loss for both active and reserve component forces.<sup>11</sup> At the time when

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<sup>10</sup> Statement of Craig W. Duehring, Assistant Secretary, Manpower and Reserve Affairs, U.S. Air Force before the House Appropriations Committee, Subcommittee on Defense, March 17, 2009.

<sup>11</sup> Secretary of Defense Memorandum, *Subject: Utilization of the Total Force*, January 19, 2007.

the memo was released in 2007, only the Army was still using its Stop Loss authority and maintained that the program was still necessary to ensure that only trained and ready units were deployed to Iraq and Afghanistan.<sup>12</sup> On March 18, 2009, Secretary Gates announced the phased suspension of the Stop Loss program.<sup>13</sup>

## What is the Impact of Unit-Based Stop Loss on Army Personnel?

As implemented by the Army, Stop Loss affects both active and reserve component soldiers from 90 days prior to their unit deployment date (active component) or mobilization date (Guard and Reserve), through the deployment (currently 12 months for units deployed to OIF and OEF) and for a maximum of 90 days following the redeployment. The 90 days following redeployment is to allow adequate time for transition activities.

As a “worst case” scenario, a soldier who was scheduled to separate from active duty 90 days prior to the deployment date would be involuntarily retained in the unit for those three months plus 12 months<sup>14</sup> of deployment plus up to 90 days of redeployment and transition; a potential involuntary extension of up to 18 months. In this example, an enlistment that specified four years of active duty would have grown to five and a half years on active duty. However, even a maximum enlistment of six years and an involuntary extension of 18 months would be less than the contractual eight year Military Service Obligation.

According to DOD officials, there are four primary factors that affect the number of soldiers subject to Stop Loss:

- 1. The length of the deployment.** As the length of a deployment increases, the number of soldiers in Stop Loss status will increase (e.g., the Army increased deployments for OIF from 12 to 15 months during the “surge” in Iraq).
- 2. The number of units deployed.** As more units are deployed, the number of soldiers affected by Stop Loss will increase (e.g., the 2007 “surge” in Iraq from 15 to 20 Brigade Combat Teams (BCT)).
- 3. The distribution of separation dates within a unit.** A somewhat random factor, the more soldiers in the unit with separation dates after their scheduled redeployment, the fewer who would be affected by Stop Loss.
- 4. Units alerted for out-of-cycle deployments.** As more units are notified of deployment dates that are sooner than what was originally planned, the more soldiers who could be affected by Stop Loss.

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<sup>12</sup> Secretary of the Army Memorandum: *Subject: Army’s Response to Minimizing the Use of Stop Loss Policy*, March 7, 2007.

<sup>13</sup> New York Times, “‘Stop-Loss’ Will All But End By 2011, Gates Says,” by Thom Shanker, March 19, 2009.

<sup>14</sup> The Army has maintained a 12-month deployment cycle except immediately before and during the 2007-2008 “surge” of forces in Iraq when the deployment period was extended to 15 months. The Marine Corps uses a 7-month deployment cycle.

The relationship between the number of deployed Brigade Combat Teams (BCT) and the length of the deployment has been modeled by DOD to demonstrate the impact of Stop Loss on individual soldiers. The model shows that if there are 15 BCTs deployed on a 12-month rotation cycle, the average soldier impacted by Stop Loss will be involuntarily extended by 4.8 months. If the number of deployed BCTs increases from 15 to 20 and if the rotation cycle increases from 12 to 15 months, the average soldier retained by Stop Loss will spend an average of 6.6 additional months on active duty.

## **Why Deploy Units Rather Than Individuals?**

The need for Stop Loss is directly linked to the Army's rotation methodology for OIF/OEF which emphasizes the rotation of units rather than individuals. The Army, in particular, has long struggled with the issue of using individual or unit replacements, attempting to balance the benefits of unit cohesion with a personnel system that emphasizes individual career development. It has long been believed that stabilizing personnel in units would improve readiness and allow the unit to operate more effectively as a team. However, from World War II through Vietnam, units were initially deployed to the combat theater and individual replacements were then used to compensate for those who were killed, wounded or rotated out for various reasons. The unit remained in the combat theater but its composition and identity changed dramatically over time with this personnel turnover.

During WWII, individual replacements were trained by replacement centers, shipped to a replacement depot and called forward into combat units as necessary. With no prior unit affiliation, these replacements were "military orphans" with little esprit de corps and cohesion. With no previous combat experience, these replacements struggled to be integrated into the pre-existing "band of brothers" in the unit and many quickly became casualties themselves,<sup>15</sup> in part because they were unfamiliar with unit operations.

Once a soldier was wounded or separated from his unit during WWII, there was little chance of returning to the same unit. When cleared to return to duty, these soldiers were also sent to a replacement depot and would be reassigned to whatever unit then needed their particular skills. To avoid a new unit and remain with their comrades, wounded soldiers sometimes concealed their injuries and remained with their units.

Again in Korea, units were sustained by individual replacements. Some attempts were made to recruit, train, and deploy small, 4 to 5 man teams that were supposed to be assigned to the same unit but this seldom occurred due to the combat tempo. Korea also saw the introduction of an individual rotation program based on time exposed to combat.<sup>16</sup> Rather than serving in combat until killed, injured, or the war ended, individuals in Korea were returned stateside after serving a specified number of months. This rotation policy increased the personnel turnover.

In Vietnam, individual servicemembers were continuously rotating in and out based on when they completed their one-year tour or deployment. As a result, there was very little unit cohesion and

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<sup>15</sup> MilitaryHistoryOnline.com, *The U.S. Army in World War II: Manpower and Segregation* by Rich Anderson, 2000.

<sup>16</sup> For a detailed review of unit stabilization and replacement policies in WWII, Korea and Vietnam, see the Center for Strategic and Budgetary Assessments, *Forging the Sword: Unit-Manning in the U.S. Army*, by Pat Towell, September 2004.

new personnel were a continuous training challenge. This turbulence was exacerbated by a command tour policy that saw unit leaders serving only six months in command while soldiers served a year in the unit.

From WWII through Vietnam, this soldier replacement method was referred to as the Individual Replacement System and it was frequently cited for causing an unacceptably high level of personnel turbulence and for inhibiting the formation of cohesive units, especially in the combat arms. Recognizing the importance of unit stability to overall combat readiness, the Army, since the end of Vietnam, has attempted at least four different systems<sup>17</sup> of *unit replacement*, each designed to keep soldiers and leaders together longer. However, each of these proved unsatisfactory to the Army's leadership and the most recent was discontinued at the beginning of the buildup for Operation Desert Shield/Storm.

Since 2004, the Army has pursued unit stabilization through the Unit Manning System to ensure that trained and ready units were available for deployment. This system is focused on Brigade Combat Teams (BCT) and linked into the Army's Force Generation Model. This model categorizes units through a progression of deployment preparedness from retraining to ready to available.<sup>18</sup> However, even this most recent attempt at unit stabilization to enhance readiness has depended upon the use of Stop Loss to minimize personnel turbulence.

## **Has Stop Loss Had an Impact on Recruiting?**

Some observers predicted that the perceived unpopularity of the Stop Loss program would have a negative impact on recruiting and the vitality of the all-volunteer military. However, since the beginning of OEF/OIF, there has been no definitive survey data that would demonstrate that a shortfall, either in quantity or quality, has been directly attributable to the Stop Loss program. With the recent economic downturn and a rising unemployment rate, any concern about Stop Loss from potential recruits may be overshadowed by the military becoming an increasingly attractive and financially secure option.

At the height of the insurgency in Iraq and with mounting casualties, the Army did miss its quantitative recruiting goal in FY2005; with a recruiting target of 80,000, the Army recruited 73,373 new recruits for a shortfall of 8.3%. By increasing the number of recruiters, increasing the service's advertising budget, and raising the maximum amount of enlistment bonuses from \$20,000 to \$40,000, the Army was able to achieve its recruiting mission of 80,000 in each of FY2006, 2007, 2008 and 2009<sup>19</sup>, in spite of the very difficult recruiting environment. Even with this quantitative success, most analysts were concerned about the decline in recruit quality as measured by the number of high school diploma graduates, the number of moral waivers<sup>20</sup> being

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<sup>17</sup> Military Review, "A History of Unit Stabilization" by John R. Brinkerhoff, May-June 2004.

<sup>18</sup> For additional details on the Force Generation Model, see CRS Report RL32476, *U.S. Army's Modular Redesign: Issues for Congress*, by Andrew Feickert.

<sup>19</sup> Additional details on the recruiting program are discussed in CRS Report RL32965, *Recruiting and Retention: An Overview of FY2008 and FY2009 Results for Active and Reserve Component Enlisted Personnel*, by Lawrence Kapp and Charles A. Henning.

<sup>20</sup> To enlist in the armed forces, a moral waiver is required for past criminal behavior which includes traffic offenses, drug use, misdemeanors and felony convictions. Individuals who have committed certain crimes (drug trafficking, multiple felonies, sexually violent crimes) are automatically excluded from waiver consideration and barred from enlisting.

required, and the increase in the number of recruits from the lowest acceptable mental category in FY2005 through FY2008. However, the Army had a remarkably successful recruiting year in 2009, both with respect to quantity and quality. Retention has been successful, annually meeting or exceeding the numerical goals.

The Army Reserve and Army National Guard also experienced recruiting difficulties since September 11, 2001, but both components have continued to recruit in the range of 95-100% of the annual objective, and had an a very good year in 2009, achieving 104.6% and 100.1% respectively, of the objective.

One area of special concern has been the potential impact of Stop Loss on the “Influencers”; the parents, teachers and coaches who are viewed as the key to recruiting success. While the number of these influencers who would support a young person joining the military declined as the wars in Iraq and Afghanistan continued, the most current assessment reflects that 59% of these “influencers” now support joining the military<sup>21</sup>, a significant improvement over the past several years.

## **Has Stop Loss Improved Unit Readiness?**

According to the Army, Stop Loss is used sparingly and only affects about 1% of the Total Army (Active, Reserve, and National Guard). With a total force of approximately 1,200,000 and an average of 12,000 soldiers in Stop Loss status, the Army’s claim is correct but may lead some observers to conclude that terminating Stop Loss would therefore have a negligible (1%) impact on readiness.

However, when one considers that most or all soldiers in Stop Loss status are deployed to OIF or OEF, the potential impact of Stop Loss on personnel readiness is greater. For example, with 12,204 soldiers<sup>22</sup> in Stop Loss status and 129,700 Army soldiers currently deployed<sup>23</sup> to OIF/OEF, those in Stop Loss status represent nearly 10% of the deployed force. Observers assert that requiring units to deploy with a personnel shortage of 10% or more would likely have a significant detrimental impact on unit readiness.

Another dimension of the readiness problem is that approximately 45% of the Stop Loss cohort are noncommissioned officers (NCOs) in grades E5 (Sergeant) through E9 (Sergeant Major) who have declined to reenlist or submitted voluntary retirement requests, if eligible. These NCOs are the leadership backbone of small units and a key to the unit’s tactical success. Observers assert that deploying without these key NCOs at squad, platoon and company level or losing them immediately prior to deployment would likely have a substantial adverse impact on unit training, cohesion, and stability.

The Army’s deployment criteria for Brigade Combat Teams requires that they achieve 105% of their authorized enlisted strength and 95% of their authorized officer strength at 90 days prior to

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<sup>21</sup> Christian Science Monitor, “Americans’ Views of Military Service Improve,” by Gordon Lubold, November 10, 2008.

<sup>22</sup> See September 2008 data at Appendix A.

<sup>23</sup> DOD Information Paper, *Congressional Research Service Request for Boots on the Ground (BOG) Statistics for Iraq and Afghanistan*, September 1, 2008.

deployment. Without Stop Loss, these units might be unable to meet this criteria and would deploy in a somewhat degraded readiness posture.

## **Does Stop Loss Have Any Impact on End Strength?**

The Army fought the first several years of OIF/OEF with an active duty end strength of 482,400, which many Members of Congress and defense observers thought was too low in light of operational demands. However, this level was strongly supported by both DOD and the Army leadership. In a rather dramatic change of position, the newly appointed Secretary of Defense announced on January 19, 2007 that he would seek approval to increase the end strength of both the Army and the Marine Corps.<sup>24</sup>

Subsequently, Congress approved an end strength increase for the active Army from 482,400 to 547,400 by the end of FY2012<sup>25</sup>. This represented an increase of 65,000. The Army achieved this new, higher end strength by the end of FY2009, three years earlier than mandated by Congress.

However, as Congress monitors the growth of the Army, it should be noted that the Stop Loss program may artificially inflate the actual end strength. For example, if the Army reports an FY2008 end strength of 530,000, this number would include nearly 7,500 active duty soldiers who have been involuntarily retained beyond their initial obligation. The actual end strength would have been only 522,500 soldiers if the Stop Loss contingent had been allowed to separate or retire as their normal terms of active duty expired. As a result, continuing to grow the Army may require additional recruiting or retention targets to negate the effect of ending Stop Loss on Army end strength.

## **Has “Grow the Army” Reduced the Need for Stop Loss?**

The mandated 65,000 soldier increase in active Army end strength from 482,400 to 547,400 by FY2012, as discussed earlier, is commonly referred to as the “Grow the Army” initiative. Through recruiting and retention efforts, as previously mentioned, the Army completed this growth by 2009, three years earlier than required by Congress.

Some observers have noted that the Army could divert some of this increase to minimizing or eliminating the need for Stop Loss. However, it appears that the Army is more committed to growing its force structure from 42 to 48 Brigade Combat Teams and from 75 to 83 Modular Support Brigades and will therefore continue to use Stop Loss to reduce unit shortages.

Another possible option would be to continue the Stop Loss program for NCOs, recognized as critical to small unit leadership and cohesion, but eliminate the program for junior enlisted personnel, most of whom would be serving their initial enlistment. While the Army has

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<sup>24</sup> Department of Defense (DOD) Press Transcripts, DOD News Briefing with Under Secretary of Defense David Chu, Lieutenant General Stephen Speakes, and Lieutenant General Emerson Gardner from the Pentagon, January 19, 2007.

<sup>25</sup> Section 403, P.L. 110-181.

experience with both unit-based and skill-based Stop Loss, this option would require implementation of a special Grade (or Rank)-based Stop Loss program.

## **Has There Been Any Legislation Regarding the Stop Loss Program?**

The FY2002 National Defense Authorization Act (NDAA) included two provisions regarding the Stop Loss program. The first focused on those who had been extended by Stop Loss beyond their mandatory retirement or separation and were denied a transition period upon completion of their OIF/OEF tour. The provision<sup>26</sup> authorized Service Secretaries to extend these servicemembers on active duty for 90 days to provide additional time to prepare for retirement or separation.

The second focused on the issue of special or incentive pay which, at the time, could not be paid beyond the ending date of a servicemember's active duty commitment. In this instance, the provision<sup>27</sup> authorized the continuation of all special and incentive pays during the entire period of involuntary retention resulting from Stop Loss.

The FY2006 NDAA emphasized the importance of informing potential and current servicemembers about the possibility of Stop Loss by requiring two reports from DOD.<sup>28</sup> The first report was required to address the actions being taken by DOD to ensure that those being recruited for the armed forces were aware of Stop Loss and the further possibility of being recalled from the Individual Ready Reserve (IRR) following their active duty obligation. In response, DOD revised the enlistment contract<sup>29</sup> to explicitly explain Stop Loss and to provide a briefing on Stop Loss prior to any potential recruit signing the enlistment contract. The second report required the services to provide Stop Loss and IRR Recall information periodically during a member's enlistment.

In response to the FY2006 NDAA, DOD revised the somewhat vague reference to Stop Loss in the enlistment contract to explicitly state:

During any period members of a Reserve component are serving on active duty pursuant to an order to active duty under authority of 10 U.S.C. 12301, 12302, or 12304, the President may suspend any provision of law relating to my promotion, retirement, or separation from the Armed Forces if he or his designee determines I am essential to the national security of the United States. Such an action may result in an extension, without my consent, of the length of service specified in this agreement. Such an extension is often called a "stop-loss" extension.

Legislation introduced in the 110<sup>th</sup> Congress sought to establish a special pay for any servicemember in Stop Loss status in the amount of \$1,500 per month and would have made this authority retroactive to October 1, 2001 for an estimated 160,000 personnel.<sup>30</sup> However, this

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<sup>26</sup> Section 508, FY2002 National Defense Authorization Act, P.L. 107-107, December 28, 2001.

<sup>27</sup> Section 623, FY2002 National Defense Authorization Act, P.L. 107-107, December 28, 2001.

<sup>28</sup> Section 546, FY2006 National Defense Authorization Act, P.L. 109-163, January 6, 2006.

<sup>29</sup> Department of Defense Forms 4/1 through 4/3, July 2007.

<sup>30</sup> H.R. 6205 and S. 3060.

initial attempt to provide additional compensation to those in Stop Loss status was not included in the FY2009 Duncan Hunter National Defense Authorization Act (NDAA).

## **Stop Loss Special Pay**

While the FY2009 NDAA was silent on the issue of compensation for those in Stop Loss status, the FY2009 omnibus appropriations act<sup>31</sup> authorized a maximum Stop Loss Special Pay of \$500 per month for any servicemember in Stop Loss status during any month or portion thereof during FY2009. The amount of \$72 million was appropriated for this purpose. This provision was not retroactive to September 11, 2001 and the authority for this special pay initially expired on September 30, 2009. This date was initially extended to September 30, 2009, by the FY2010 Defense Appropriations Act<sup>32</sup> and then further extended to June 30, 2011, by the FY2010 National Defense Authorization Act (NDAA).<sup>33</sup>

On April 1, 2009, the Army began paying the \$500 per month Stop Loss special pay authorized by the FY2009 Omnibus Appropriations Act. All soldiers currently in Stop Loss status received this monthly special pay. In addition, the pay was retroactive to October 1, 2008 and was automatically paid to soldiers who had separated but who were in Stop Loss status between October 1, 2008, and April 1, 2009. The retroactive payments were completed by June 2009.

Because active duty units continued to deploy with Stop Loss authority through December 31, 2009, Stop Loss payments will not be totally suspended until approximately June 30, 2011, to allow for the redeployment of these units and the necessary time (60 days) for transition processing<sup>34</sup>. This transition period, previously 90 days, is designed to give servicemembers time to process for separation, retirement or reassignment to a new duty station.

**Appendix C** contains a timeline that reflects the sequence of recent legislation that established the Stop Loss Special Pay, the Stop Loss Retroactive Pay, and the two extensions of Stop Loss Special Pay.

## **Suspension of the Stop Loss Program**

On March 18, 2009, Secretary of Defense Gates announced the phased suspension of the Army's Stop Loss program that was intended to eliminate the regular use of Stop Loss. The table below reflects the Army component and the date for suspending the use of Stop Loss.

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<sup>31</sup> Section 8116, H.R. 2638, Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 which became P.L. 110-329, September 30, 2008.

<sup>32</sup> Section 8108, P.L. 111-118, December 19, 2009.

<sup>33</sup> Section 620, P.L. 111-84, October 28, 2009.

<sup>34</sup> Section 620, P.L. 111-84, October 28, 2009.

**Table I. Phased Suspension of Stop Loss**

<b>Component</b>	<b>Stop Loss Suspension Date</b>
Active Army	January 1, 2010
Army National Guard	September 1, 2009
Army Reserve	August 1, 2009

**Source:** DOD News Release No. 179-09, March 18, 2009.

While the services retain the legal authority to suspend the separation of servicemembers, any renewed use of Stop Loss would appear to require an emergency situation which would be based upon critically short skills, would be of a limited duration requirement, and would require the approval of the Service Secretary.

## **Army Incentive Programs Following the Suspension of Stop Loss**

To compensate for the suspension of Stop Loss while continuing to deploy trained, ready and adequately manned units, each Army component (Active, Guard, and Reserve) has announced incentive programs designed to encourage the voluntary extension of eligible soldiers whose separation date is immediately before, during or after their unit's scheduled deployment.

The Active Army and Army National Guard have established the Deployment Extension Incentive Pay (DEIP) program. Soldiers who are scheduled to separate up to nine months prior to the deployment date, during the deployment, or for up to 60 days following the redeployment are eligible to participate. Those who voluntarily extend during a three-month window (180 to 270 days before their unit's deployment date) will receive \$500 per month for each full month of their extension. These payments begin after the member's separation date and will be tax-free if earned while in a war zone. To encourage early extension decisions, soldiers who delay and then decide to extend 90 to 180 days before deployment will only receive \$350 per month.

Soldiers with six months or longer to serve upon their unit's deployment date who choose not to reenlist or extend to receive DEIP, will be required to deploy with their unit but will be redeployed at least 60 days prior to their separation date to allow time for transition processing. If necessary, these early re-deployers will be replaced using individual replacements. Soldiers with less than six months to serve and who do not opt for DEIP will not deploy and must separate on or before their contracted separation date.

The incentive program adopted by the Army Reserve differs from their Active Army and Army National Guard counterparts. Six months before an Army Reserve unit is scheduled to mobilize and deploy, the unit is considered a high priority unit and is placed in the Designated Unit Stabilization Program (DUSP). Every soldier in the unit, regardless of their separation date, will then qualify for an additional \$200 for every drill weekend or up to a total of \$1,200 prior to deployment. Those soldiers with a separation or retirement date during the unit's deployment must extend or reenlist within one year to six months prior to the mobilization date to qualify for the DUSP payments. Soldiers who choose not to extend or reenlist will not deploy and may be reassigned to another unit or the Individual Ready Reserve (IRR). Army Reserve soldiers will not receive any additional special pay during the deployment.

**Table 2** reflects recent data on the acceptance rates of these voluntary incentive programs by component:

**Table 2. Army Voluntary Extension/Reenlistment Program**

Component	Eligible	Participating	Percentage
Active Army	22,841	5,535	24.2%
Army National Guard	12,639	7,154	56.6%
Army Reserve	903	83	9.2%

**Source:** G-1, Department of the Army.

**Notes:** Data for Active Army and Army National Guard is “as of” March 11, 2010. Data for Army Reserve is “as of” January 20, 2010.

## Retroactive Stop Loss

As noted earlier, the FY2009 Omnibus Appropriations Act authorized Stop Loss payments of \$500 per month but limited this special pay to soldiers in Stop Loss status for any month or portion thereof during FY2009. This special pay would have expired on September 30, 2009, but the date was extended to June 30, 2011, by the FY2010 NDAA. Many supporters of the special pay provision were disappointed that the pay was not retroactive to September 11, 2001, a time when all four Services used some form of their Stop Loss authority to support military operations.

To address this issue, the FY2009 Defense Supplemental<sup>35</sup> appropriated \$534.4M<sup>36</sup> to provide retroactive Stop Loss special pay for approximately 185,000 former or retired, active or reserve component servicemembers who were in Stop Loss status during the period September 11, 2001, through September 30, 2008. These funds were restricted to Stop Loss special pay and are unavailable to the Services for other purposes. Consistent with the original program, the retroactive pay is \$500 per month or portion thereof, and tax free for any month that the servicemember was in a combat zone. For example, a former soldier who served eight months in Iraq in Stop Loss status would be authorized \$4,000 in lump sum retroactive special pay.

This legislation also requires a report from DOD by October 22, 2010, that must include the number of claims filed, the number of claims approved, the number of claims denied, the number of claims still pending, the amount of funding obligated, the amount of funding still available and the average payment. Following this initial report, the data must be updated every six months until all the designated funds have been expended.

Former servicemembers will have a one year window for submitting claims and the one year period began on October 21, 2009, the date that DOD published the implementing program guidance. Payments beyond the one-year period that ends on October 21, 2010 are specifically

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<sup>35</sup> Section 310, P.L. 111-32, June 24, 2009.

<sup>36</sup> The House originally proposed a \$734.4M retroactive Stop Loss program but this amount was reduced by \$200M in the conference report.

prohibited by the legislation. The implementing service guidance was published on October 21, 2009.

As mentioned earlier, a timeline that reflects the sequence of recent legislation that established the Stop Loss Special Pay, the Stop Loss Retroactive Pay, and the two extensions of the Stop Loss Special Pay is available in **Appendix C**

## Implementation of Retroactive Stop Loss Payments

Each service is responsible for marketing the Retroactive Stop Loss Payment program and establishing a process for receiving and processing retroactive Stop Loss claims. All services, except the Navy, have established electronic submission procedures even though they also allow for the manual submission of claims. Claims that require additional documentation or justification must be referred to a case manager or claims processor which may delay validation for up to 90 days. After validation, claims are forwarded to the Defense Finance and Accounting Service (DFAS) for payment. Service contact information is in **Appendix B**

DOD estimated that a total of 185,000 former servicemembers would be eligible for the Stop Loss Retroactive Pay. However, by early December, 2009, only a small percentage of the anticipated number of total claims had been received: 10,807 by the Army; 5 by the Navy; 1,929 by the Marine Corps; and 1,690 by the Air Force. Approximately 80% of the initial claims received by the Army had problems (social security account number not in the Army database, number of months of stop loss being claimed were inconsistent with Army records, etc.) and were referred to a case manager for resolution.

The processing of applications was suspended in late December 2009 after Congress clarified eligibility for the program. Specifically, servicemembers who voluntarily reenlisted or extended while in Stop Loss status *and* who received a reenlistment or extension bonus, are no longer eligible for the retroactive pay.<sup>37</sup> Any servicemember who had already received a bonus and been paid the Stop Loss Retroactive Pay will not have these funds recouped.<sup>38</sup>

After resuming the program, 18,234 Retroactive Stop Loss claims (approximately 10% of the estimated eligible population) had been received by the services as of January 14, 2010.<sup>39</sup> Of these, 3,663 had been certified, 268 remained unsubstantiated and 1,774 had been paid with the rest in process. Processing time is currently averaging approximately 50 days.

To apply for Retroactive Stop Loss Payments, former servicemembers should contact the appropriate service liaison office in **Appendix B**

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<sup>37</sup> Section 8108(d), P.L. 111-118, December 19, 2009.

<sup>38</sup> Army Times, "Pentagon Won't Recoup Retro Stop-Loss Pay," William H. McMichael, January 5, 2010.

<sup>39</sup> Data provided by the Office of the Secretary of Defense.

## Appendix A. Army Stop Loss Totals by Month (Enlisted Only)

Month/Year	Active Army	National Guard	Army Reserve	Total
November 2004	5,984	2,460	2,984	11,428
December 2004	6,640	3,016	3,459	13,115
January 2005	7,872	2,086	4,527	14,485
February 2005	8,348	2,199	4,196	14,743
March 2005	9,045	2,681	4,032	15,758
April 2005	9,044	2,480	3,762	15,286
May 2005	7,986	2,480	3,616	14,082
June 2005	7,951	2,447	3,392	13,790
July 2005	7,325	2,772	3,280	13,377
August 2005	7,458	2,953	2,970	13,381
September 2005	6,929	3,002	2,847	12,778
October 2005	7,803	2,962	2,602	13,367
November 2005	8,383	2,840	2,473	13,696
December 2005	7,620	2,429	2,418	12,467
January 2006	8,826	2,250	2,238	13,314
February 2006	9,282	2,336	2,231	13,849
March 2006	8,968	1,953	1,945	12,866
April 2006	7,782	2,242	1,994	12,018
May 2006	6,040	2,190	2,000	10,230
June 2006	6,130	2,160	1,864	10,154
July 2006	6,408	2,113	1,894	10,415
August 2006	7,061	2,134	1,815	11,010
September 2006	8,045	2,132	1,806	11,983
October 2006	8,742	2,286	1,645	12,673
November 2006	8,697	2,201	1,645	12,543
December 2006	7,072	2,036	1,603	10,711
January 2007	7,148	2,053	1,537	10,738
February 2007	6,207	2,004	1,556	9,767
March 2007	5,364	2,006	1,536	8,906
April 2007	5,185	2,103	1,432	8,720
May 2007	4,946	2,125	1,469	8,540
June 2007	5,355	2,313	1,501	9,169
July 2007	5,238	2,401	1,520	9,159
August 2007	5,874	2,275	1,459	9,608

<b>Month/Year</b>	<b>Active Army</b>	<b>National Guard</b>	<b>Army Reserve</b>	<b>Total</b>
September 2007	6,322	2,325	1,464	10,111
October 2007	6,940	2,199	1,324	10,463
November 2007	7,627	2,020	1,363	11,010
December 2007	7,407	2,027	1,370	10,801
January 2008	7,690	2,168	1,440	11,298
February 2008	7,227	2,267	1,478	10,972
March 2008	6,868	3,879	1,488	12,235
April 2008	6,547	3,838	1,561	11,946
May 2008	6,728	3,803	1,523	12,054
June 2008	7,011	3,903	1,419	12,333
July 2008	6,828	3,801	1,308	11,937
August 2008	6,824	3,934	1,475	12,233
September 2008	6,714	4,025	1,465	12,204
October 2008	6,915	4,036	1,465	12,416
November 2008	6,884	4,177	1,552	12,613
December 2008	7,176	4,349	1,432	12,957
January 2009	7,307	4,458	1,452	13,217
February 2009	6,878	4,389	1,473	12,740
March 2009	6,420	4,347	685	11,452
April 2009	5,872	4,377	981	11,230
May 2009	5,870	4,313	820	11,003
June 2009	4,680	4,161	688	9,529
July 2009	4,871	4,285	834	9,990
August 2009	5,225	4,434	504	10,163
September 2009	4,709	4,357	569	9,635
October 2009	4,818	3,930	372	9,120
November 2009	4,723	3,694	270	8,696
December 2009	4,661	3,410	282	8,353
January 2010	4,452	3,163	246	7,861
February 2010	3,960	2,929	233	7,122

**Source:** G-1, Department of the Army.

**Note:** Data above is not cumulative. Rather, it represents a “snapshot” at the end of the respective month.

## **Appendix B. Service Contacts for the Retroactive Stop Loss Program**

The following contacts are available to provide information on the Retroactive Stop Loss Program:

**Army:** Go to <https://www.stoplosspay.army.mil> or e-mail RetroStopLossPay @ CONUS.Army.Mil

**Navy:** E-mail NXAG\_N132C@Navy.Mil

**Marine Corps:** Go to <https://www.manpower.usmc.mil/stoploss> or e-mail stoploss@usmc.mil

**Air Force:** Go to <http://www.afpc.randolph.af.mil/stoploss/>

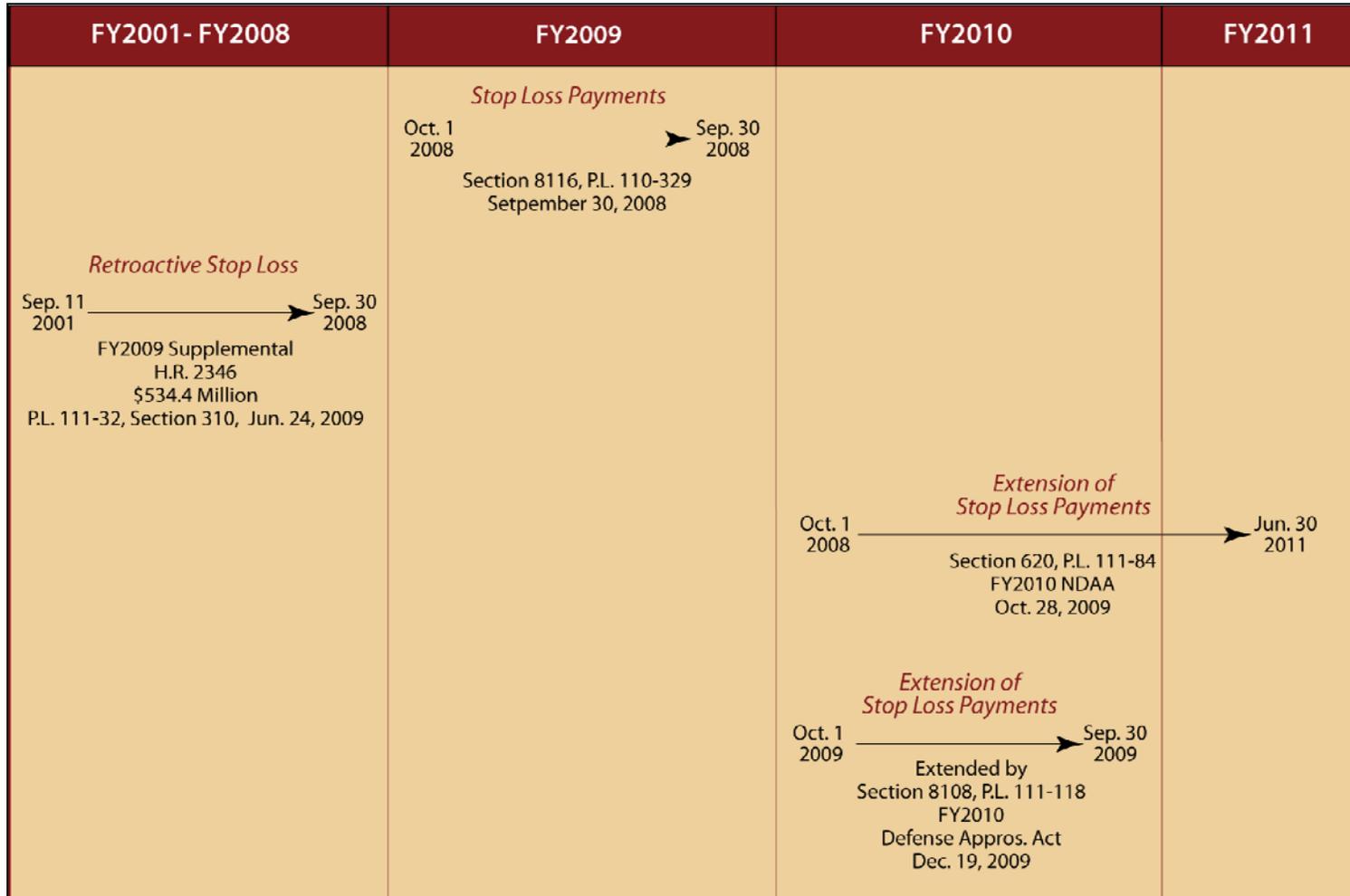
Servicemembers must provide documented proof that they were Stop Lossed along with their claim.

Family members of deceased servicemembers should contact the appropriate military service for assistance in filing their claim.

All applications must be submitted by October 21, 2010. Applications received after that date will not be processed.

## Appendix C. Stop Loss Timetable

Figure C-1. Stop Loss Timetable, 2001-2011



Source: CRS Graphics.

Note: Timelines are portrayed vertically from earliest to most recent legislation and horizontally to reflect the time period covered by the legislation.

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