



**Report on Review of Processes and Procedures
Employed by Agencies for Appeals by
Individuals Denied Federal Benefits for Failing
to Register with Selective Service System**

FY2022 NDAA, Section 529A

DIRECTOR OF SELECTIVE SERVICE SYSTEM
US SELECTIVE SERVICE SYSTEM
1515 Wilson Blvd, Arlington, VA 22209

TABLE OF CONTENTS

2	Executive Summary
3	1. The Selective Service System and Registration
3	1.1. The Selective Service System
3	1.2. Registration
4	1.3. Registration Incentives
4	1.4. Grounds for Appeals
5	2. Individual Agencies
5	2.1. U.S. Citizenship and Immigration Services (USCIS)
6	2.2. Office of Personnel Management (OPM)
6	2.3. Department of Education
7	3. National Commission on Military, National, and Public Service
7	3.1. National Commission on Military, National, and Public Service
8	4. Selective Service Recommendations
8	4.1. Recommendations

Executive Summary

Section 529A(a) of P.L 117-81, the National Defense Authorization Act for Fiscal Year 2022, requires the Director of Selective Service System to submit a report “setting forth the results of a review of the processes and procedures employed by agencies across the Federal Government for the appeal by individuals of a denial of status or benefits under Federal law for failure to register [with Selective Service System] under the Military Selective Service Act” MSSA.¹ Section 529A(b) requires the Director to prepare the report in consultation with the Secretary of Homeland Security, the Secretary of Education, and the Director of the Office of Personnel Management.

Section 529A(c)(1)(A)-(B) provides that the analysis of the agencies’ processes and procedures for appeal of those denials is to include a review of the following elements, among others:

- A description and assessment of the various appeal processes and procedures employed by the agencies.
- The adequacy of notice provided for appeals under those processes and procedures.
- The fairness of each process and procedure.
- The ease of use of each such process and procedure.
- The consistency in the application of such processes and procedures across the Federal Government.
- The applicability of an appeal granted by one Federal agency under such processes and procedures to the actions and decisions of another Federal agency on a similar appeal.

In accordance with section 529A(c)(3)-(4), this report also provides an assessment of the recommendations of the National Commission on Military, National, and Public Service for reforming the rules and policies concerning failure to register with Selective Service System. The report concludes with my recommendations.



Craig T. Brown
Director (Acting)
Selective Service System

¹ The MSSA is codified at 50 U.S.C. § 3801 et seq.

1. SELECTIVE SERVICE SYSTEM AND REGISTRATION

1.1 THE SELECTIVE SERVICE SYSTEM

Selective Service System is the independent agency of the Federal Government responsible for preserving America's ability to conduct a fair and just military draft to meet the Armed Services' personnel needs in the face of future threats, and to demonstrate America's resolve to international allies and adversaries.

In its March 2020 Final Report to Congress, the National Commission on Military, National, and Public Service (the "Commission") concluded:

To meet military personnel needs in the face of future threats and to demonstrate America's resolve to international allies and adversaries, the Nation needs the Selective Service System to remain a viable U.S. national security institution.²

Selective Service performs its mission by:

- Registering and maintaining a database of males between the ages of 18 and 25 who are citizens or residents of the United States.
- Preparing, when directed by Congress and the President, to respond to a Department of Defense (DOD) request for inductees within 193 days.
 - When authorized, directing registrants to report to a Military Entrance Processing Station (MEPS) for examination and induction into the Armed Forces.
- Maintaining a system of classification based on exemptions and deferments.
- Maintaining a structure for managing alternative service for conscientious objectors (COs).
- Maintaining a structure for registering and classifying persons who are qualified for practice or employment in a health care occupation essential to the maintenance of the Armed Forces.

1.2 REGISTRATION

With few exceptions, the MSSA requires all male citizens and male United States residents ages 18 and 25³ to register with Selective Service System. Registration is completed by providing identifying information (name, date of birth, Social Security number, and address) at the time of registration. Registration is a prerequisite to a draft, not an induction into training and service.⁴

² *Inspired to Serve: Final Report of the National Commission on Military, National, and Public Service*, pg. 7 (March 2020)

³ Once a male reaches age 26 they are no longer eligible to register with Selective Service System

⁴ Authorization to conduct a military draft requires Congress to amend the MSSA.

On July 2, 1980, President Carter signed Proclamation 4771 (Registration under the Military Selective Service Act) reinstating the requirement for registration which reads, in part:

Section 3 of the Military Selective Service Act, as amended [50 U.S.C. § 3802], provides that male citizens of the United States and other male persons residing in the United States who are between the ages of 18 and 26, except those exempted by Sections 3 and 6(a) of the Military Selective Service Act, must present themselves for registration at such time or times and place or places, in such manner as determined by the President. Section 6(k) provides that such exceptions shall not continue after the cause for exemption ceases to exist.

The proclamation requires males born on or after January 1, 1960, to present themselves for registration. It further identifies who shall register, who is exempt from registration, the days of registration, the places and times for registration, and the manner of registering. On February 22, 2000, Proclamation 7275, signed by President Clinton, amended Proclamation 4771 sections 1-2, 1-201, and 1-202, expanding the places and methods of registration.

1.3 REGISTRATION INCENTIVES

Although there are criminal penalties for *intentional* failure to register, 50 U.S.C. § 3811(a), Congress has also elected to increase *voluntary* registration rates by linking certain benefits to registration. These benefits include eligibility for employment in the Executive branch of the Federal Government (5 U.S.C. § 3328(a)), and job training under the Workforce Innovation and Opportunity Act (29 U.S.C. § 3249(h)). In addition, failure to register prior to turning 26 may delay eligibility for naturalization for non-citizens until age 31 (USCIS Policy Manual, Volume 12, part D, Chapter 7). Finally, registration is required for an individual to be eligible for:

- Employment with state government in 19 states;
- Various types of state-funded student aid in 24 states; and
- Attending a state-funded college or university in nine states.

1.4 GROUNDS FOR APPEALS

Congress recognizes that some people may be unaware of the requirement to register and/or may inadvertently fail to register. As such, the MSSA states:

A person may not be denied a right, privilege, or benefit under Federal law by reason of failure to present himself for and submit to registration under section 3 if — (1) the requirement for the person to so register has terminated or become inapplicable to the person; and (2) the person shows by a preponderance of the evidence that the failure of the person to register was not a knowing and willful failure to register.⁵

Selective Service System does not have statutory authority to adjudicate appeals by non-registrants seeking a benefit linked to registration. Rather, the entity granting the registration-linked benefit determines whether failure to register was knowing and willful. The extent of

⁵ 50 U.S.C. § 3811(g)

Selective Service System's involvement in the appeal process is limited to providing a Status Information Letter that indicates whether the person seeking a registration-linked benefit is registered.

2. INDIVIDUAL AGENCIES

2.1 U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS)

Male naturalization applicants, younger than age 31, who fail to register with Selective Service System are instructed by USCIS to obtain a Status Information Letter from Selective Service System. The procedure is fair and easy to use because the applicant is required to explain to USCIS the circumstances surrounding his failure to register.

In order to be eligible for naturalization, an applicant must demonstrate good moral character, attachment to the Constitution, and favorable disposition toward the good order and happiness of the United States for a statutorily prescribed period of time (usually three to five years, depending upon the basis for eligibility for naturalization).⁶ An applicant for naturalization who knowingly and willfully failed to register with Selective Service System within the statutory period is ineligible for naturalization due to the failure to meet those requirements. However, eligibility for naturalization will not be delayed if the applicant shows sufficient evidence that his failure to register was not a knowing or willful act.

USCIS provides adequate notice to non-registrants regarding the right to appeal. USCIS Policy Manual, Volume 12, part D, Chapter 7 reads:

USCIS will deny a naturalization application when the applicant refuses to register with Selective Service [System] or has knowingly and willfully failed to register during the statutory period. The officer may request for the applicant to submit a status information letter and registration acknowledgment card before concluding that he failed to register.

The status information letter will indicate whether a requirement to register existed. The applicant must show by a preponderance of the evidence that his failure to register was not a knowing or willful act. Failure on the part of USCIS or [Selective Service System] to complete the process on behalf of the applicant, however, will not constitute a willful failure to register on the part of the applicant.

The standard of proof (preponderance of the evidence) is applied by USCIS to male immigrants seeking naturalization to determine whether his failure to register was knowing or willful.

USCIS' processes and procedures are consistent with those across the Federal Government because USCIS applies a uniform burden of proof (preponderance of the evidence) to all men applying for naturalization who failed to register with Selective Service System.

If USCIS determines that an individual who failed to register with Selective Service System is eligible for naturalization, either because the failure to register is outside the statutory period or because the applicant established that the failure to register was not knowing or willful, that

⁶ See 8 U.S.C. §§ 1427(a); 1430(a)

determination is not applicable to other Federal registration-linked benefits. A non-registrant who is naturalized must seek a waiver for any additional registration-linked benefits they pursue.

2.2 OFFICE OF PERSONNEL MANAGEMENT (OPM)

OPM adjudicates appeals by those who failed to register and who thereafter seek employment in the Executive branch. These processes and procedures are set forth at 5 C.F.R. part 300, subpart G.

OPM regulations provide adequate notice to non-registrants regarding the right to appeal decisions denying Federal employment on the ground of failure to register with Selective Service. Section 7 of the OF-306 (Declaration for Federal Employment) asks if the prospective employee is registered.⁷ If not, the prospective employee is directed to complete Section 16 to provide his reason for not registering.⁸

Agencies have two options when a non-registrant applies for a job in the Executive branch: hire another candidate or pursue a waiver from OPM. OPM's procedures are consistent with those of other Federal agencies in that OPM uniformly applies the same burden of proof (preponderance of the evidence) to persons who seek OPM adjudication.

A waiver for Federal employment is not applicable to other Federal registration-linked benefits. A non-registrant who obtains a waiver for Federal employment must seek a waiver for any additional registration-linked benefits they pursue.

2.3 DEPARTMENT OF EDUCATION

From 1982 to 2021, males were required to register with Selective Service System in order to receive Title IV Federal student aid. During that period, the Free Application for Federal Student Aid (FAFSA) accounted for approximately 25% of annual registrations. This requirement was eliminated by the *FY 2021 Consolidated Appropriations Act*.⁹ While that provision was subject to a delayed effective date, Congress gave the Secretary of Education authority to implement at any time prior to July 1, 2023. The Secretary of Education exercised this authority by publishing notice in the Federal Register on June 17, 2021, which took effect on August 16, 2021. The Federal Register notice provided that failing to register with Selective Service System no longer impacts students' eligibility for Title IV student aid. Effective July 1, 2022, applicants will no longer be able to register with Selective Service System via the FAFSA¹⁰

To obtain Federal student aid, students and prospective students must complete and submit a FAFSA. Before the issuance of the FY 2022-23 FAFSA, question #22 has read:

If female, skip to question 23. Most male students must register with the Selective Service System to receive federal aid. If you are male, are age 18-25, and have not registered, fill in the circle, and we will register you. **See Notes page 9.**

⁷ [Declaration for Federal Employment, Optional Form 306 \(opm.gov\)](https://www.opm.gov/policy-data-oversight/forms/306/)

⁸ *Id.* NOTE: The prospective employee's right to seek a waiver from OPM to work in the Executive branch of the Federal Government is not specified on Optional Form 306.

⁹ Pub. L. 116-260, Title VII – FAFSA Simplification

¹⁰ *Id.*

The notes on page 9 of the FAFSA read:

To be eligible for federal student aid, male citizens and male immigrants residing in the U.S. aged 18 through 25 are required to register with the Selective Service System, with limited exceptions. The Selective Service System and the registration requirement applies to any person assigned the sex of male at birth (see www.sss.gov/Registration-Info/Who-Registration). The Selective Service System and the registration requirement for males preserves America's ability to provide resources in an emergency to the U.S. Armed Forces. For more information about the Selective Service System, visit sss.gov. Forms are available at your local U.S. Post Office.

The notice provided on the FAFSA explained who must register but failed to notify non-registrants of their right to appeal for access to Title IV student aid.

Prior to the 2021 passage of the FAFSA Simplification Act, the Department of Education delegated to financial-aid departments of colleges and universities the authority to grant waivers to obtain Federal student aid, despite an applicant's failure to register. These colleges and universities did not collect data on their use of that authority. Consequently, there is no Federal data that can be used to determine the fairness, ease of use, and consistency in the application of the appeal processes and procedures.

A waiver for Federal student aid was not applicable to other Federal registration-linked benefits. A non-registrant who obtained a waiver for Federal student aid must seek a waiver for any additional registration-linked benefits they pursue.

3. NATIONAL COMMISSION ON MILITARY, NATIONAL, AND PUBLIC SERVICE

3.1 NATIONAL COMMISSION ON MILITARY, NATIONAL, AND PUBLIC SERVICE

The Commission has recognized the importance of registration by stating in its Final Report to Congress "that maintaining an active, mandatory registration system mitigates the level of potential risk to the Nation and protects the critical functions and procedures that safeguard a fair, equitable, and transparent draft process."¹¹

The Commission made one recommendation for reforming the rules and policies concerning failure to register with Selective Service System. Recommendation #38 reads:

The Commission recommends that Congress amend the MSSA to provide any individual who has been denied a Federal benefit due to nonregistration with the Selective Service System an opportunity to register within 30 days, no matter the individual's age at the time of denial, and to become eligible for the benefit denied.¹²

The Agency's assessment, provided to the Commission at the time, continues to be that the proposal would inadvertently create a situation in which individuals are not incentivized to

¹¹ *Inspired to Serve: Final Report of the National Commission on Military, National, and Public Service*, page 7 (March 2020)

¹² *Id.* at page 101

register with Selective Service System unless and until they need access to a benefit. Beyond unfairly disadvantaging those who follow the law, this could have significant unintended effects. For example, it would seemingly be inconsistent with Congressional intent to allow a person well beyond the age of 26 to register.

4. SELECTIVE SERVICE SYSTEM RECOMMENDATIONS

4.1 RECOMMENDATIONS

- The aforementioned agencies are unable to provide documentation responsive to 529A(c) (2). Accordingly, a central repository should be created to store data pertaining to waivers requested and granted.
- Review the impact of the FAFSA Simplification Act to determine if alternate streams of data and/or additional registration-linked benefits are appropriate to ensure that men ages 18 to 25 are aware of their legal requirement to register.
- Explore options for improving the appeal/waiver process to ensure that:
 - Non-registrants have adequate notice of their appeal rights;
 - Each process and procedure is fair, consistent, and streamlined (ease of use); and
 - Appeals granted by one Federal agency make the non-registrant eligible for other registration incentives across the Federal government (instead of requiring the non-registrant to file an appeal each time he seeks a Federal registration incentive);





SELECTIVE SERVICE SYSTEM

NATIONAL HEADQUARTERS

ARLINGTON, VA 22209

703.605.4010