

## **FY2011 National Defense Authorization Act: Selected Military Personnel Policy Issues**

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## Summary

Military personnel issues typically generate significant interest from many Members of Congress and their staffs. Ongoing military operations in Iraq and Afghanistan, along with the emerging operational role of the Reserve Components, further heighten interest in a wide range of military personnel policies and issues.

The Congressional Research Service (CRS) has selected a number of the military personnel issues considered in deliberations on the House-passed and Senate versions of the National Defense Authorization Act for FY2011. This report provides a brief synopsis of sections that pertain to personnel policy.

The House version of the National Defense Authorization Act for Fiscal Year 2011, H.R. 5136, was introduced in the House on April 26, 2010, reported by the House Committee on Armed Services on May 21, 2010 (H.Rept. 111-491), and passed by the House on May 28, 2010.

The Senate version of the NDAA, S. 3454, was introduced in the Senate on June 4, 2010 and reported by the Senate Committee on Armed Services on June 4, 2010 (S.Rept. 111-201). However, S. 3454 was never passed by the Senate.

Instead of a Conference Committee to resolve differences, a new bill (H.R. 6523) was introduced in the House of Representatives on December 15, 2010. It was passed by the House on December 17, 2010 and passed by the Senate on December 22, 2010. The bill, the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, was signed by the President on January 7, 2010 and became P.L. 111-383.

Where appropriate, related CRS products are identified to provide more detailed background information and analysis of the issue. For each issue, a CRS analyst is identified and contact information is provided.

Some issues were addressed in the FY2010 National Defense Authorization Act and discussed in CRS Report R40711, *FY2010 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by (name redacted). Those issues that were previously considered in CRS Report R40711, *FY2010 National Defense Authorization Act: Selected Military Personnel Policy Issues* are designated with a “\*” in the relevant section titles of this report.

This report focuses exclusively on the annual defense authorization process. It does not include appropriations, veterans’ affairs, tax implications of policy choices or any discussion of separately introduced legislation.

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## Background

Each year, the Senate and House Armed Services Committees report their respective versions of the National Defense Authorization Act (NDAA). These bills contain numerous provisions that affect military personnel, retirees and their family members. Provisions in one version are often not included in another; are treated differently; or, in certain cases, are identical. Following passage of these bills by the respective legislative bodies, a Conference Committee is usually convened to resolve the various differences between the House and Senate versions.

In the course of a typical authorization cycle, congressional staffs receive many constituent requests for information on provisions contained in the annual NDAA. This report highlights those personnel-related issues that seem to generate the most intense congressional and constituent interest, and tracks their status in the FY2011 House and Senate versions of the NDAA.

The House version of the National Defense Authorization Act for Fiscal Year 2011, H.R. 5136, was introduced in the House on April 26, 2010, reported by the House Committee on Armed Services on May 21, 2010 (H.Rept. 111-491), and passed by the House on May 28, 2010.

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Instead of a Conference Committee to resolve differences, a new bill (H.R. 6523) was introduced in the House of Representatives on December 15, 2010. It was passed by the House on December 17, 2010 and passed by the Senate on December 22, 2010. The bill, the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, was signed by the President on January 7, 2010 and became P.L. 111-383.

The entries under the headings “House-passed”, “Senate-reported”, and “House and Senate-passed ” in the tables on the following pages are based on language in these bills, unless otherwise indicated.

Where appropriate, related CRS products are identified to provide more detailed background information and analysis of the issue. For each issue, a CRS analyst is identified and contact information is provided.

Some issues were addressed in the FY2010 National Defense Authorization Act and discussed in CRS Report R40711, *FY2010 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by (name redacted). Those issues that were previously considered are designated with a “\*” in the relevant section titles of this report.

## \*Active Duty End Strengths

**Background:** The National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181) authorized the Army to grow by 65,000 and the Marine Corps by 27,000, to respective end strengths of 547,400 and 202,000 by FY2012. In both FY2009 and FY2010, the Army was authorized additional, but smaller, increases to an FY2010 end strength of 562,400. Even with these increases, the nation's armed forces, especially the Army and Marine Corps, continue to experience high deployment rates and abbreviated "dwell time" at home station. With a significant increase in the number of servicemembers deployed to Afghanistan during 2009 and 2010, some observers have recommended further increases in end strength, especially for the Army. Others, pointing to the potential Army drawdown beginning in 2012 and the high cost of military personnel, have advocated reducing end strength.

House-passed (H.R. 5136)	Senate Committee-reported (S. 3454)	House and Senate-passed (H.R. 6523)/P.L. 111-383
Section 401 authorizes a total FY2010 active duty end strength of 1,432,400 including:  569,400 for the Army 328,700 for the Navy 202,100 for the Marine Corps 332,200 for the Air Force	Section 401 authorizes identical end strengths for the Active Component.	Section 401 authorizes identical end strengths for the Active Component.

**Discussion:** With ongoing operations in both Iraq and Afghanistan, service end strengths remain a high visibility issue because of the impact on dwell time, readiness and unit manning concerns. The House-passed version authorizes an increase of 7,000 for the Army, an increase of 500 for the Air Force, a decrease of 100 for the Navy, and no change for the Marine Corps (see table below).

**Table 1. Authorized Active Duty End Strengths**

	2008 (P.L. 110-181)	2009 (P.L. 110-417)	2010 (P.L. 111-84)	2011 (P.L. 111-383)
Baseline Army	525,400	532,400	562,400	569,400 (+7,000)
Baseline Navy	329,098	326,323	328,800	328,700 (-100)
Baseline Marine Corps	189,000	194,000	202,100	202,100 (no change)
Baseline Air Force	329,563	317,050	331,700	332,200 (+500)
<b>Baseline Subtotal</b>	<b>1,373,061</b>	<b>1,369,773</b>	<b>1,425,000</b>	<b>1,432,400</b>
Temporary Army	n/a	+ 22,000a	+ 22,000a	n/a
Temp. Marine Corps	n/a	+13,000a	0	n/a
Temporary Subtotal	n/a	35,000	22,000	n/a
<b>Total Authorized</b>	<b>1,373,061</b>	<b>1,404,773</b>	<b>1,477,000</b>	<b>1,432,400</b>

Note a: Temporary additional authority for 2009 and 2010 is provided by Section 403 of P.L. 110-181.

**References:** Previously discussed in CRS Report RL34590, *FY2009 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by (name redacted) and CRS Report R40711, *FY2010 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by (name redacted).

**CRS Point of Contact:** Charles Henning, x7-.....

## End Strength for Selected Reserves

**Background:** Although the Reserves have been used extensively in support of operations since September 11, 2001, the overall authorized end-strength of the Selected Reserves has declined by about 2 ½% over the past nine years (874,664 in FY2001 versus 854,500 in FY2010). Much of this can be attributed to the reduction in Navy Reserve strength during this period. There were also modest shifts in strength for some other components of the Selected Reserve. For comparative purposes, the authorized end-strengths for the Selected Reserves for FY2001 were as follows: Army National Guard (350,526), Army Reserve (205,300), Navy Reserve (88,900), Marine Corps Reserve (39,558), Air National Guard (108,022), Air Force Reserve (74,358), Coast Guard Reserve (8,000).<sup>1</sup> Between FY2001 and FY2010, the largest shifts in authorized end-strength have occurred in the Army National Guard (+7,674 or +2%), Coast Guard Reserve (+2,000 or +25%), Air Force Reserve (-4,858 or -7%), and Navy Reserve (-23,400 or -26%). A smaller change occurred in the Air National Guard (-1,322 or -1.2%), while the authorized end-strength of the Army Reserve (-300 or -0.15%) and the Marine Corps Reserve (+42 or +0.11%) have been essentially unchanged during this period.

House-passed (H.R. 5136)	Senate Committee-reported (S. 3454)	House and Senate-passed (H.R. 6523)/P.L. 111-383
Section 411 authorizes the following end-strengths for the Selected Reserves:  Army National Guard: 358,200  Army Reserve: 205,000  Navy Reserve: 65,500  Marine Corps Reserve: 39,600  Air National Guard: 106,700  Air Force Reserve: 71,200  Coast Guard Reserve: 10,000	Section 411 authorizes identical end-strengths for the Selected Reserves.	Section 411 authorizes identical end-strengths for the Selected Reserves.

**Discussion:** The authorized Selected Reserve end-strengths for FY2011 are the same as those for FY2010 with the exception of the Air Force Reserve. The Air Force Reserve's authorized end-strength in FY2010 was 69,500, but the administration requested an increase to 71,200 (+1,700), noting that "The Fiscal Year 2011 end strength amount includes the increase associated with the Department of Defense decision to halt the drawdown of active duty Air Force end strength at 330,000 personnel."<sup>2</sup>

**Reference(s):** None.

**CRS Point of Contact:** (name redacted), x7-....

<sup>1</sup> P.L. 106-398, sec. 411.

<sup>2</sup> Air Force Reserve, *Air Force Reserve Fiscal Year (FY) 2011 Budget Estimates*, Washington, DC, February 2010, p. 7, at <http://www.saffm.hq.af.mil/shared/media/document/AFD-100127-158.pdf>.

## \*Military Pay Raise

**Background:** Ongoing military operations in Iraq and Afghanistan, highlighted by the significant increase in the number of servicemembers deployed to Afghanistan, continue to focus interest on the military pay raise. Title 37 U.S.C. §1009 provides a permanent formula for an automatic annual military pay raise that indexes the raise to the annual increase in the Employment Cost Index (ECI). The FY2011 President's Budget request for a 1.4% military pay raise was consistent with this formula. However, Congress, in FYs 2004, 2005, 2006, 2008, 2009 and 2010 approved the pay raise as the ECI increase plus 0.5%. The FY2007 pay raise was equal to the ECI.

House-passed (H.R. 5136)	Senate Committee-reported (S. 3454)	House and Senate-passed (H.R. 6523)/P.L. 111-383
Section 601 supports a 1.9% (0.5% above the President's Budget) across-the-board pay raise that would be effective January 1, 2011.	No similar provision	No provision enacted; pay raise of 1.4% provided under 37 U.S.C. 1009

**Discussion:** A military pay raise larger than the permanent formula is not uncommon. In addition to "across-the-board" pay raises for all military personnel, mid-year and "targeted" pay raises (targeted at specific grades and longevity) have also been authorized over the past several years.

While the House-passed version of the NDAA recommended a 1.9% across the board pay raise, both the Senate-reported bill and H.R. 6523 were silent on the pay raise issue. As a result, the Title 37 provision (37 U.S.C. 1009) became operative with an automatic January 1, 2011 across-the-board raise of 1.4% (equal to the ECI).

**Reference:** Previously discussed in CRS Report RL34590, *FY2009 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by (name redacted), page 6 and CRS Report R40711, *FY2010 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by (name redacted). See also CRS Report RL33446, *Military Pay and Benefits: Key Questions and Answers*, by (name redacted).

**CRS Point of Contact:** Charles Henning, x7-.....



## Increases in Hostile Fire/Imminent Danger Special Pay and Family Separation Allowance

**Background:** Hostile Fire or Imminent Danger Pay (HP/IDP)<sup>3</sup> is a special pay that is paid to servicemembers who are exposed to hostile fire or the explosion of hostile mines (such as Improvised Explosive Devices or IEDs); serve in an area where other servicemembers were subject to such hazards or are: killed, wounded, or injured by any hostile action; or are on duty in a foreign area where the servicemember is in imminent danger due to insurrection, civil war, terrorism, or war. This pay was temporarily increased from \$100 to \$225/month by the FY2004 National Defense Authorization Act (NDAA) and this increase was then made permanent by the FY2005 NDAA.

The Family Separation Allowance (FSA)<sup>4</sup> is paid to servicemembers with dependents when the servicemember is deployed to a dependent-restricted area, serves on board ship for more than 30 days or when the member is on temporary duty (TDY) for more than 30 days. This allowance was temporarily increased from \$100 to \$250/month by the FY2004 NDAA and then made permanent by the FY2005 NDAA.

House-passed (H.R. 5136)	Senate Committee-reported (S. 3454)	House and Senate-passed (H.R. 6523)/P.L. 111-383
Section 618 increases Hostile Fire/Imminent Danger Pay from \$225/month to \$260/month (an increase of \$35/month) effective October 1, 2010.	No similar provision	No provision enacted
Section 604 increases Family Separation Allowance from \$250/month to \$285/month (also an increase of \$35/month), and also effective October 1, 2010.		

**Discussion:** Increasing these two types of pay is intended to compensate for the erosion in compensation due to inflation since the last increase. The Congressional Budget Office (CBO) estimates that the House-approved increase to the Family Separation Allowance would cost \$288 million over the 2011-2015 period and the increase to the Hostile Fire Pay would cost \$188 million over the same period.

**Reference:** Previously discussed in CRS Report RL31334, *Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom: Questions and Answers About U.S. Military Personnel, Compensation, and Force Structure*, by (name redacted) and (name redacted).

**CRS Point of Contact:** Charles Henning, x7-.....

<sup>3</sup> 37 U.S.C. 310.

<sup>4</sup> 37 U.S.C. 427.

## Ineligibility of Certain Federal Civilian Employees for Reservist Income Replacement Payments

**Background:** The 109<sup>th</sup> Congress enacted a provision, codified at 37 U.S.C. §910, that provides a special payment of up to \$3,000 to reservists who experience income loss due to frequent or extended involuntary mobilizations.<sup>5</sup> Subsequently, the first session of the 111<sup>th</sup> Congress enacted a provision, codified at 5 U.S.C. §5538, to minimize the income loss of civilian employees of the federal government who are involuntarily ordered to active duty or involuntarily retained on active duty.<sup>6</sup> It does so by providing “differential pay” – a payment equal to the amount by which a reservist’s military pay and allowances are lower than his or her civilian basic pay. This latter provision only applies to federal government employees, but it is not limited to cases of extended or frequent activations like the earlier provision.

House-passed (H.R. 5136)	Senate Committee-reported (S. 3454)	House and Senate-passed (H.R. 6523)/P.L. 111-383
Section 607 amends 37 U.S.C. §910 to specify that members of the reserve components who are eligible for payments under 5 U.S.C. §5538, or similar administratively established programs, are not eligible for compensation under 37 U.S.C. §910.	Section 603 is similar in effect to the House provision, although the legislative language is slightly different.	Section 601 is similar in effect to both the House and Senate provisions, although the legislative language is slightly different.

**Discussion:** Section 601 would prevent civilian employees of the federal government from claiming benefits under 37 U.S.C. §910 if they are eligible for “pay differential” benefits under 5 U.S.C. 5538 or a similar program.

**Reference(s):** 37 U.S.C. §910, “Replacement of lost income: involuntarily mobilized reserve component members subject to extended and frequent active duty service.”

5 U.S.C. 5538, “Nonreduction in pay while serving in the uniformed services or National Guard.”

Office of Personnel Management, Reservist Differential Agency Implementation Guidance, available at <http://www.opm.gov/reservist/ReservistDiffImplementationGuidance.pdf>.

**CRS Point of Contact:** (name redacted), x7-....

<sup>5</sup> P.L. 109-163, *National Defense Authorization Act for FY2006*, section 614, January 6, 2006. Under this provision, Reservists who have experienced income loss become eligible for these payments in any full month of active duty following the month in which they: (a) complete 18 consecutive months of active duty under an involuntary mobilization order; (b) complete 24 months of active duty under an involuntary mobilization order out of the previous 60 months; or (c) are involuntarily mobilized for a period of 180 days or more within six months or less of a previous period of involuntary active duty for a period of 180 days or more.

<sup>6</sup> P.L. 111-8, Omnibus Appropriations Act, 2009, section 751, March 11, 2009; amended by P.L. 111-117, Consolidated Appropriations Act, 2010, section 745, December 16, 2009.

## Yellow Ribbon Reintegration Program Modification

**Background:** The National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181) established the Yellow Ribbon Reintegration Program, “a national combat veteran reintegration program to provide National Guard and Reserve members and their families with sufficient information, services, referral, and proactive outreach opportunities throughout the entire deployment cycle.”<sup>7</sup> Yellow Ribbon events may include information, services, referral and outreach related to marriage counseling, suicide prevention, mental health awareness and treatment, post-traumatic stress disorder, financial counseling, veterans’ benefits, employment workshops, and other topics.

House-passed (H.R. 5136)	Senate Committee-reported (S. 3454)	House and Senate-passed (H.R. 6523)/P.L. 111-383
Section 584 makes several modifications to the Yellow Ribbon Reintegration Program, including (1) authorizing military service and state-based programs to offer “curriculum, training, and support for services to members and families from all components,” (2) requiring the Center for Excellence in Reintegration to develop a process for evaluating the effectiveness of the Yellow Ribbon program, (3) adding “providing information on employment opportunities” as a focus area for post-deployment activities, and (4) adding “resiliency training” as an authorized type of outreach service.	No similar provision.	Section 583 is identical to Section 584 of H.R. 5136.

**Discussion:** The adopted provision makes several changes to the Yellow Ribbon program in an effort to broaden access to the program, enhance its effectiveness, and refine its scope.

**Reference(s):** The Yellow Ribbon Reintegration Program website is <http://www.yellowribbon.mil/index.html>. Directive Type Memorandum 08-029

“Implementation of the Yellow Ribbon Reintegration Program” is available at <http://www.dtic.mil/whs/directives/corres/pdf/DTM-08-029.pdf>.

**CRS Point of Contact:** (name redacted), x7-.... or Don Jansen at x7-.....

<sup>7</sup> Section 582 of P.L. 110-181 as amended by section 595 of the National Defense Authorization Act for Fiscal Year 2010 (P.L. 110-84), 10 U.S.C. 10101 note.

## TRICARE Cost-Share

**Background:** The law authorizing the TRICARE program includes provisions requiring program beneficiaries to share in the cost of their health care. However, legislative measures to prevent increases in some of these cost-share provisions have regularly been enacted. Section 1086(b)(3) of title 10, United States Code, requires a copayment rate of 25% of the cost of inpatient care for retirees, “except that in no case may the charges for inpatient care for a patient exceed \$535 per day during the period beginning on April 1, 2006, and ending on September 30, 2010.” Section 1074g(a) of title 10, United States Code, authorizes charges for retirees and certain other beneficiaries in TRICARE Prime for pharmaceutical agents available through retail. In the absence of legislation prohibiting increases, DOD can increase these cost shares. For example, when the previous prohibition on inpatient copayments under TRICARE Standard expired on September 30, 2009, DOD announced that the per diem rate would increase to a rate equal to 25% of the cost of inpatient care. This would have increased the inpatient cost share for retirees younger than 65 and their family members to \$645 a day, or 25% of total hospital charges, whichever was less. However, subsequent enactment of section 709 of the National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84), which extended the prohibition until September 30, 2010, prevented the announced inpatient care copayment increase under TRICARE Standard from taking place.

House-passed (H.R. 5136)	Senate Committee-reported (S. 3454)	House and Senate-passed (H.R. 6523)/P.L. 111-383
Sections 701 and 705 would prohibit increases in TRICARE beneficiaries' cost sharing in 2011.	Section 701 would prohibit increases in TRICARE beneficiaries' cost sharing for inpatient care in 2011	Sections 701 and 705 prohibit increases in TRICARE beneficiaries' cost sharing in 2011.

**Discussion:** Sections 701 and 705 of the enacted bill prohibit DOD from increasing any fees or copayments under the TRICARE Standard, Extra, and Prime plans during FY2011.

**Reference(s):** None.

**CRS Point of Contact:** Don Jansen, x7-.....

## Unified Medical Command

**Background:** Under the military health system's current structure, the Assistant Secretary of Defense (Health Affairs) is responsible for executing the overall military health care mission. The military health system delivers care through military hospitals and clinics, commonly referred to as military treatment facilities (MTFs) as well as civilian providers. MTFs comprise DOD's direct care system for providing health care to beneficiaries. Each military service, under its surgeon general, is responsible for managing its MTFs. Each service, other than the Marine Corps, also programs and deploys its own medical personnel. The service surgeons general report upward through the service chain of command to their respective service secretaries. The TRICARE Management Activity, under the Assistant Secretary of Defense (Health Affairs), is responsible for awarding, administering, and overseeing contracts for civilian managed care support contractors to develop networks of civilian primary and specialty care providers to augment the MTFs. Some observers believe that this command structure is fragmented and would be improved by unifying the command elements of the military health system in a "Unified Medical Command."

There is a long history of debate and analysis of the concept of a Unified Medical Command (UMC). This debate is summarized in chapter 12 of the December 2007 Final Report of the Task Force on the Future of Military Health Care. Typically, plans for a unified medical command would have each service's medical component report to a departmental medical command outside of the service rather than to the service secretary, and the medical command would report directly to the Secretary of Defense. According to the Task Force report, proponents of a unified medical command say potential benefits include elimination of command fragmentation, a single point of accountability, increased integration for all elements of the medical command and control, better integrated health care delivery, enhanced peacetime effectiveness and ability to quickly transition to a rapidly deployable and flexible medical capability in a war scenario. Opponents say that the "unified" objectives are unclear; that execution of service specific doctrine and inculcation of service culture among medical personnel might be weakened under a "unified" command; and that service accountability for the health and welfare of forces would be better maintained through direct control.

Congress has previously tasked DOD with examining various unified medical command options in the past. The Government Accountability Office, however, reviewed DOD's most recent efforts and found that DOD did not perform a comprehensive cost-benefit analysis of all potential options and did not provide any evidence of analysis to justify its decisions.<sup>8</sup>

House-passed (H.R. 5136)	Senate Committee-reported (S. 3454)	House and Senate-passed (H.R. 6523)/P.L. 111-383
Section 903 would establish a unified medical command within DOD.	No similar provision.	No provision enacted

**Discussion:** Section 903 would authorize the Secretary of Defense to establish a unified medical command to provide medical services to the armed forces and other DOD health care beneficiaries. This section also would require the Secretary to develop a comprehensive plan to

<sup>8</sup> GAO, Defense Health Care: DOD needs to Address the Expected Benefits, Costs and Risks for Its Newly Approved Medical Command Structure. GAO-088-122 p. 4.

establish a unified medical command. The Obama Administration's statement of administration policy on H.R. 5136 strongly opposes section 903:

The Administration strongly objects to the provision in the bill to authorize the President to create a new military medical command. The proposed delegation of responsibilities to a unified medical command would render hollow the role of the Assistant Secretary of Defense for Health Affairs (ASD(HA)) to serve as the principal Departmental official for health and medical matters. The imposition of additional organizational structure with the attendant personnel and operational costs it would require could directly conflict with the effort by the Administration to eliminate unnecessary bureaucratic layers, headquarters and defense organizations.<sup>9</sup>

**Reference(s):** None.

**CRS Point of Contact:** Don Jansen, x7-.....

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<sup>9</sup> Available at [http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/111/saphr5136h\\_20100527.pdf](http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/111/saphr5136h_20100527.pdf).

## TRICARE Coverage to Age 26

**Background:** In general, eligibility for TRICARE is lost when either a dependent child turns 23 (if enrolled in an accredited school as a full-time student) or 21 if not enrolled. Section 1001 of the Patient Protection and Affordable Care Act (P.L. 111-148, PPACA) amends Part A of Title XXVII of the Public Health Service Act (PHSA) to add a new Section 2714 specifying that a group health plan and a health insurance issuer offering group or individual health insurance coverage that provides dependent coverage of children shall continue to make such coverage available until the dependent child turns 26 years of age. However, the provisions of title XXVII of the PHSA do not appear to apply to TRICARE.

House-passed (H.R. 5136)	Senate Committee-reported (S. 3454)	House and Senate-passed (H.R. 6523)/P.L. 111-383
Section 702 would offer premium-based TRICARE coverage of dependent children until age 26.	Section 702 would offer premium-based TRICARE coverage of dependent children until age 26.	Section 702 amends title 10, United States Code, to require DOD to offer premium-based TRICARE coverage of dependent children until age 26.

**Discussion:** Section 702 of the enacted bill amends chapter 55 of title 10, United States Code, to insert a new section (1110b) establishing a new TRICARE program offering premium-based dependent coverage until age 26. The premium feature makes the TRICARE program dissimilar from the coverage mandated by PPACA which prohibits separate premiums. The PPACA provision provides that

A group health plan and a health insurance issuer offering group or individual health insurance coverage that provides dependent coverage of children shall continue to make such coverage available for an adult child (who is not married) until the child turns 26 years of age.

Department of Health and Human Services regulations have interpreted PPACA to extend dependent coverage, not create a new policy for which a separate premium would be charged.<sup>10</sup> Organizations representing military constituencies have expressed concern about the potential amount of the premiums that might be charged under the new TRICARE program.

**Reference(s):** CRS Report R41198, *TRICARE and VA Health Care: Impact of the Patient Protection and Affordable Care Act (PPACA)*, by (name redacted) and (name redacted).

**CRS Point of Contact:** Don Jansen, x7-.....

<sup>10</sup> <http://www.hhs.gov/ociio/regulations/dependent/index.html>

## Space Available Care for Grey-Area Retirees

**Background:** Under current law, reserve component members who have retired with 20 or more years of qualifying service but have not yet reached the age of 60 (so called “grey-area” retirees), are not eligible for space-available care at military treatment facilities. This has traditionally been the policy because the individuals in this category were “working-age” and were assumed to be able to obtain health from other providers. Last year, however, TRICARE Standard coverage was made available to gray area reservists by section 705 of the National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84). Grey-area retirees are now able to purchase TRICARE Standard coverage under a new program known as TRICARE Retired Reserve for an unsubsidized premium, which enables the individual to access private sector care.

House-passed (H.R. 5136)	Senate Committee-reported (S. 3454)	House and Senate-passed (H.R. 6523)/P.L. 111-383
Section 643 would make care at military treatment facilities available to grey-area retirees who are less than 60 years of age.	No similar provision	No provision enacted

**Discussion:** Section 643 would amend 10 U.S.C. §1074 to eliminate the restriction on space-available care at military treatment facilities for retired reservists. The section does not require the purchase of the pending TRICARE Standard insurance for grey-area retirees to receive the space available-care. The Congressional Budget Office estimates that section 643 would require appropriations of \$125 million over the FY2011–FY2015 period.

**Reference(s):** Reserve retirement is discussed in CRS Report RL30802, *Reserve Component Personnel Issues: Questions and Answers*, by (name redacted).

**CRS Point of Contact:** Don Jansen, x7-.....



## Repeal of “Don’t Ask, Don’t Tell”

**Background:** On November 30, 1993, Congress enacted P.L. 103-160, the National Defense Authorization Act for Fiscal Year 1994. Section 571 of the law, codified at 10 United States Code 654, describes homosexuality in the ranks as an “unacceptable risk ... to morale, good order, and discipline.” The law stated the grounds for discharge as follows: (1) the member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts; (2) the member states that he or she is a homosexual or bisexual; or (3) the member has married or attempted to marry someone of the same sex. The law also stated that DOD would brief new entrants (accessions) and members about the law and policy on a regular basis. Finally, legislative language instructed that asking questions of new recruits concerning sexuality could be resumed—having been halted in January, 1993—on a discretionary basis. As such, this law represented a discretionary “don’t ask, definitely don’t tell” policy. Notably, the law contained no mention of “orientation.” In many ways, this law contained a reiteration of the basic thrust of the pre-1993 policy. As implemented by the Clinton Administration, new recruits would not be asked about their sexuality. The policy became known as “Don’t Ask, Don’t Tell” (DADT).

House-passed (H.R. 5136)	Senate Committee-reported (S. 3454)	House and Senate-passed (H.R. 6523)/P.L. 111-383
On May 27, 2010, an amendment (H.Amdt. 672) was passed that would repeal DADT after receipt of recommendations from the Comprehensive Review Working Group on how to implement such a repeal, after certification by the Sec. of Defense that such a repeal would not adversely affect readiness, effectiveness, cohesion and recruiting, and after DOD had prepared the necessary policies and regulations for such a repeal. Following the certification, there would be a 60-day waiting period before the repeal was to take effect.	Sec. 591 possessed the same language as in the House version. The report also noted that the Senate planned to hold hearings once the Working Group completed its review.	No language was enacted in P.L. 111-383, however, prior to consideration of H.R. 6523, a stand alone bill (H.R. 2965) containing these same provisions was passed in late December and became P.L. 111-321 on December 22, 2010.

**Discussion:** Following the release of the Working Group’s Review, the Senate held two hearings. After certification by the Chairman of the Joint Chiefs of Staff, the Secretary of Defense and the President, there remains a 60-day waiting period before repealing the current DADT policy and the law it is based upon. Until that time, DADT is still in effect.

The 112<sup>th</sup> Congress may be interested in several issues related to repeal of the ban and its implementation. The Comprehensive Review Working Group (CRWG) that studied implementing the repeal proposed changes to articles of the Uniformed Code of Military Justice dealing with sodomy, rape and carnal knowledge. Issues pertaining to the “Defense of Marriage Act” may also be raised, particularly as they affect certain military family and other benefits. Contentious issues regarding morality and religious practices may surface—particularly as they affect military chaplains and religious practices among service members—as might issues related to personal privacy. Congress may also exercise its oversight role to review the certifications submitted as part of the repeal process, to examine the modifications which the military makes to its regulations, and to assess the Services’ plans for training their forces on the integration of openly gay and lesbian servicemembers.

**Reference(s):** See CRS Report R40782, *“Don’t Ask, Don’t Tell”: Military Policy and the Law on Same-Sex Behavior*, by (name redacted), and CRS Report R40795, *“Don’t Ask, Don’t Tell”: A Legal Analysis*, by (name redacted).

**CRS Point of Contact:** (name redacted), x7-.....

## Rethinking Women's Roles in Combat: DOD's Review of Military Occupational Specialties For Female Members

**Background:** There are no laws concerning the recruitment, training and deployment of women in the Armed Forces. The last law barring women from serving on board combat ships was repealed in 1993. Under then-DOD policy (labeled the "risk rule"), women were excluded from all combat units, non-combat units and missions if the risk of exposure to direct combat, hostile fire, or capture was equal to or greater than the combat units they supported. In 1994, the risk rule was replaced by a new policy which excludes women if the following three criteria are all met. Women may not serve in units that (1) engage an enemy on the ground with weapons, (2) are exposed to hostile fire, and (3) have a high probability of direct physical contact with personnel of a hostile force. In Operation Iraqi Freedom and Operation Enduring Freedom, female troops have been deployed at check points searching other females for weapons and bombs, and have been forward deployed in support of combat units and patrols. Women have been attacked, taken prisoner, and, in some cases, killed by the enemy. The non-linear battlefield and insurgent nature of these operations makes it extremely difficult to determine safe or hostile areas.

House-passed (H.R. 5136)	Senate Committee-reported (S. 3454)	House and Senate-passed (H.R. 6523)/P.L. 111-383
Section 534 recognizes the important role women have played in every war and Congress honors those who have served and are serving as members of the Armed Forces. This section also directs the Secretary of Defense to review military occupations available to women, the collocation policy and other policies/regulations to determine whether changes are needed to enhance the ability of women to serve. The results of this review are due no later than February 1, 2011.	No similar provision.	No provision enacted.

**Discussion:** Although most observers believe that the service of women in the armed forces has been commendable, there have been complaints that DOD is violating the spirit of its existing rules by collocating women with forward units or deploying them in situations that put them in direct contact with the enemy. Some have argued that women have proven themselves and that such restrictions should be removed. Although women can serve in nearly every military occupational specialty, the combat arms (such as infantry), special forces and submarines remain off limits.

However, the Army is studying whether to open combat arms unit to women and the Navy has already announced plans in integrate women into submarine crews in the next year or so.

**Reference(s):** None.

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## Protection of Child Custody Arrangements for Parents who are Members of the Armed Forces Deployed in Support of a Contingency Operation

**Background:** Since the end of the draft in the early 1970s, the number of women in the military, the number of military families, the number of divorces, and the number of overseas deployments to combat theaters, have increased. What has also increased is the number of single military parents with custody of a child or children. Some observers believe that custody issues should be held in abeyance while servicemembers are deployed, except in instances where the best interests of the child requires a court order.

House-passed (H.R. 5136)	Senate Committee-reported (S. 3454)	House and Senate-passed (H.R. 6523)/P.L. 111-383
Section 544 amends the Service Members Civil Relief Act by adding language that (1) prevents a court from altering a custody order while a member is deployed unless evidence shows that a temporary order is in the best interest of the child, (2) requires a pre-deployment custody order to be reinstated when a service member returns again unless such a change can be shown to be not in the best interest of the child; and (3) prohibits courts from considering the possibility of deployments when determining the best interest of the child.	No similar provision.	No provision enacted.

**Discussion:** The objective of Section 544 of the House bill is to protect the best interest of the child while assuring the military personnel who face the possibility of or actual deployment are not subjected to adverse or prejudicial court orders concerning child custody during the time they are deployed. This provision was not enacted.

**Reference:** None.

**CRS Point of Contact:** (name redacted), x7-.....

## \*Improvements to Department of Defense Domestic Violence Programs

**Background:** As part of the National Defense Authorization Act of FY2000, Congress required DOD to “(1) establish a central database of information on domestic violence incidents involving members of the armed forces and (2) establish the Department of Defense Task Force on Domestic Violence. The law charged the task force with establishing a strategic plan that would allow DOD to more effectively address domestic violence matters within the military.”<sup>11</sup> The task force submitted three reports with over 200 recommendations during the 2001 to 2003 timeframe. In 2003, DOD created the Family Violence Policy Office to oversee the services in implementing the recommendations. In 2006, GAO reviewed DOD progress in this area and determined that DOD had taken action on most of the task force’s recommendations but did not have accurate or complete data from all law enforcement and clinical records. GAO made a number of recommendations, among them to get better data, to develop an oversight framework and to develop a plan to ensure adequate personnel are available. In 2010, GAO stated “DOD has addressed one of the recommendations in our 2006 report to improve its domestic violence program and taken steps toward implementing two more, but has not taken any actions on four of the recommendations.”<sup>12</sup>

House-passed (H.R. 5136)	Senate Committee-reported (S. 3454)	House and Senate-passed (H.R. 6523)/P.L. 111-383
Section 545 requires the Secretary of Defense to implement the recommendations contained in the 2006 GAO report.	No similar provision.	Section 543 requires the Secretary of Defense to implement the recommendations contained in the 2006 GAO report.

**Discussion:** According to GAO, the services are not providing accurate and complete data. GAO notes in its 2010 report that DOD does not have a plan to ensure that adequate personnel are available to implement the recommendations of the task force. In one instance, DOD did not concur with GAO’s recommendation of collecting chaplain training data, taking issue, in part, based on the principle of privileged communication. In addition, GAO recommends that DOD develop an oversight framework for implementation of the recommendations made by the task force.

**Reference(s):** See language on “Protective Orders,” CRS Report RL34590, *FY2009 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by (name redacted).

**CRS Point of Contact:** (name redacted), x7-.....

<sup>11</sup> GAO-10-577R, *Implementation of GAO’s Recommendations on DOD’s Domestic Violence Program*, p. 1, April 26, 2010.

<sup>12</sup> Ibid., p. 4.

## \*Award of the Vietnam Service Medal to Veterans Who Participated in the Mayaguez Rescue Operation

**Background:** On May 12, 1975, in the aftermath of the Vietnam War (approximately two weeks after the fall of Saigon), a U.S. merchant ship, S.S. Mayaguez, was seized by the Khmer Rouge Navy. Thirty-nine sailors were captured and taken to the island of Koh Tang. The U.S. mounted a rescue operation on May 15. By most accounts, the result was deemed a failure with four U.S. helicopters shot down or disabled, and 41 Marines killed. The number killed outnumbered the number of sailors captured by the Khmer Rouge. Shortly after the rescue attempt, all 39 U.S. sailors were released.

House-passed (H.R. 5136)	Senate Committee-reported (S. 3454)	House and Senate-passed (H.R. 6523)/P.L. 111-383
Section 575, H.R. 5136 states "The Secretary of the military department concerned shall, upon application of an individual who is an eligible veteran, award that individual the Vietnam Service Medal, notwithstanding any otherwise applicable requirements for the award of that medal. Any such award shall be made in lieu of any Armed Forces Expeditionary Medal awarded the individual for the individual's participation in the Mayaguez rescue operation."	No similar provision.	No provision enacted.

**Discussion:** The House-passed language would authorize the Vietnam Service Medal for participants in the Mayaguez rescue. It is not clear what other benefits, if any, would accrue from recognizing these individuals in this manner.

**Reference(s):** See CRS Report RL34590, *FY2009 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by (name redacted).

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## \*Pilot Program of Personalized Career Development Counseling for Military Spouses

**Background:** Military families are relocated quite frequently during a military career. Non-military spouses seeking employment at a new duty location are often frustrated because many of the skills they have may not be transferable to a new location. Often, new work skills must be learned. It has been reported that local employers prefer a more stable workforce with less turnover and less training needed. In 2008, Congress expanded training opportunities (10 USC 1784a) for military spouses by enacting “Education and Training Opportunities for Military Spouses to Expand Employment and Portable Career Opportunities,” a program that assists spouses to receive training and/or educational opportunities, including possible tuition assistance.

House-passed (H.R. 5136)	Senate Committee-reported (S. 3454)	House and Senate-passed (H.R. 6523)/P.L. 111-383
Section 583 establishes a 3-year pilot program for 75 to 150 active duty spouses to provide career development counseling consideration of incentivized careers in “critical civilian specialties” such as mental health, social work, family welfare, etc.	No similar provision.	Section 585 includes a required review of all programs of DOD and Department of Veterans Affairs designed to support spouses of members of the armed forces.

**Discussion:** The proposed pilot program in the House passed bill would have further expanded the existing program (10 U.S.C. §1784a) by assisting and encouraging a limited number of military spouses to receive education and training in portable counseling skills particularly in the areas of social services. Instead, the enacted law seeks a review of available programs.

**Reference(s):** See CRS Report RL34590, *FY2009 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by (name redacted).

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## Establishment of Junior Reserve Officers' Training Corps Units for Students Above Sixth Grade

**Background:** The Junior Reserve Officers' Training Corps or JROTC was established by the National Defense Act of 1916. According to Title 10 U.S.C. §2031, the purpose of JROTC is “to instill in students in United States secondary educational institutions the value of citizenship, service to the United States, and personal responsibility and a sense of accomplishment.” Under current law, JROTC is offered only to those above the eighth grade level.

House-passed (H.R. 5136)	Senate Committee-reported (S. 3454)	House and Senate-passed (H.R. 6523)/P.L. 111-383
Section 591 expands the establishment of JROTC to those above the sixth grade. The service secretaries are directed to conduct a review of this expansion.	Section 536 recommends that JROTC units have a minimum enrollment of 75 and 100 at institutions where total enroll is 1,000 and below, and above 1,000, respectively.	No provision enacted.

**Discussion:** Currently, hundreds of thousands of high school students participate in JROTC. Allowing those in 7<sup>th</sup> and 8<sup>th</sup> grades to participate could lead to a significant expansion of the program. Schools that have JROTC units are generally supportive of the program but it does have detractors because some parents object to the perceived “militarization” of youth.

**Reference(s):** None.

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