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FY2016 National Defense Authorization Act: Selected Military Personnel Issues

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Summary

Military personnel issues typically generate significant interest from many Members of Congress and their staffs. Ongoing operations in Afghanistan and Iraq, along with the regular use of the reserve component personnel for operational missions, 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 H.R. 1735 as passed by the House and by the Senate. This report provides a brief synopsis of sections in each bill that pertain to selected personnel policy. These include major military retirement reforms, end strengths, compensation, health care, and sexual assault, as well as less prominent issues that nonetheless generate significant public interest.

This report focuses exclusively on the annual defense authorization process. It does not include language concerning appropriations, veteran's affairs, tax implications of policy choices, or any discussion of separately introduced legislation, topics which are addressed in other CRS products. Some issues were addressed previously in the FY2015 National Defense Authorization Act and discussed in CRS Report R43647, *FY2015 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Barbara Salazar Torreon. Such issues are designated with an asterisk in the relevant section titles of this report.

Contents

Introduction.....	1
*Active Duty End Strengths	2
*Selected Reserves End Strength.....	4
*Military Pay Raise	5
*Military Retirement System.....	7
*Sexual Assault.....	9
*Gender Integration.....	12
Financial Literacy and Preparedness of Servicemembers	13
Citizenship Requirements for Enlistment in the Reserve Components	14
Termination of Educational Assistance for Reserve Component Members Supporting Contingency Operations and Other Operations.....	15
Issuance of Recognition of Service ID to Certain Members Separating from the Armed Forces.....	16
Temporary Authority to Develop and Provide Additional Recruitment Incentives.....	17
Recognition of Additional Involuntary Mobilization Duty Authorities Exempt From Five- Year Limit on Reemployment Rights of Persons Who Serve in the Uniformed Services.....	18
Honoring Certain Members of the Reserve Component as Veterans.....	19
Career Intermission Program (CIP).....	20
Acquisition Workforce.....	21
Personal Firearms on Military Installations.....	22
*Award of the Purple Heart to members of the Armed Forces who were victims of the Oklahoma City, OK, bombing.....	23
*Transfer and Adoption of Military Animals.....	25
*Defense Commissary System	27
*TRICARE Beneficiary Cost-Sharing.....	30
*TRICARE Pharmacy Copayments	31
Military Health System Quality Metrics.....	33
Contraception.....	35

Contacts

Author Contact Information.....	36
Acknowledgments	36

Introduction

Each year, the House and Senate Armed Services Committees take up national defense authorization (NDAA) bills. These bills contain numerous provisions that affect military personnel, retirees, and their family members. Provisions in one version are often not included in the other; are treated differently; or, in some cases, are identical. Following passage of these bills by the House and by the Senate, a conference committee is usually convened to resolve the differences between the respective bodies' versions of the bill.

In the typical course of enacting an annual defense authorization, congressional staffs receive many requests for information on provisions contained in these bills. This report highlights those personnel-related issues that seem likely to generate high levels of congressional and constituent interest, and compares differences between House and Senate versions.

H.R. 1735, the National Defense Authorization Act for Fiscal Year 2016, was introduced in the House on April 13, 2015. The House Armed Services Committee reported the bill on May 5th (H.Rept. 114-102), and it was passed by the House on May 15, 2015. In the Senate, S. 1376 was introduced on May 19, 2015, and reported by the Senate Armed Services Committee (S.Rept. 114-49) the same day. The Senate substituted the text of S. 1376 for the text of the House-passed bill when the full Senate took up H.R. 1735. The Senate passed H.R. 1735 on June 18, 2015.

A Statement of Administration Policy dated June 2, 2016 indicated that the President's advisors would recommend a veto of S. 1376 as reported by the Senate Armed Services Committee for a variety of reasons.¹

The Congressional Budget Office issued cost estimates for these bills on May 4, May 11, and June 3.^{2 3 4}

Related CRS products are identified in each section to provide more detailed background information and analysis of the issues. For each issue a CRS analyst is identified and contact information is provided.

Some issues discussed in this report previously were addressed in the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015 (P.L. 113-291), and discussed in CRS Report R43647, *FY2015 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Barbara Salazar Torreon, or other reports. Those issues that were considered previously are designated with an asterisk in the relevant section titles of this report.

¹ https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saps1376s_20150602.pdf.

² <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr1735.pdf>.

³ <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr1735hasc.pdf>.

⁴ <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/s1376.pdf>.

*Active Duty End Strengths

Background: The authorized active duty end-strengths⁵ for FY2001, enacted in the year prior to the September 11th terrorist attacks, were as follows: Army (480,000), Navy (372,642), Marine Corps (172,600), and Air Force (357,000). Over the next decade, in response to the demands of wars in Iraq and Afghanistan, Congress increased the authorized personnel strength of the Army and Marine Corps. Some of these increases were quite substantial, particularly after FY2006, but Congress began reversing these increases in light of the withdrawal of U.S. forces from Iraq in 2011, the drawdown of U.S. forces in Afghanistan which began in 2012, and budgetary constraints. End-strengths for the Air Force and Navy have been generally declining since 2001. In FY2015, authorized end-strengths were as follows: Army (490,000), Navy (323,600), Marine Corp (184,100), and Air Force (312,980). Given the budgetary outlook, including the future impact of the Budget Control Act of 2011 (BCA), the Army plans to reduce its active personnel strength to between 420,000 and 450,000 by FY2017, while the Marine Corps plans to reduce its active personnel strength to between 175,000 to 182,000 in the FY2017-2019 timeframe.

House-Passed H.R. 1735	Senate-Passed H.R. 1735	Final
Section 401 authorizes a total FY2016 active duty end strength of 1,308,915 including	Section 401 authorizes a total FY2016 active duty end strength of 1,305,200 including	
475,000 for the Army 329,200 for the Navy 184,000 for the Marine Corps 320,715 for the Air Force	475,000 for the Army 329,200 for the Navy 184,000 for the Marine Corps 317,000 for the Air Force	
	Section 402 would repeal 10 U.S.C. 691, which set minimum strengths “necessary to enable the armed forces to fulfill a national defense strategy calling for the United States to be able to successfully conduct two nearly simultaneous major regional contingencies” and required DOD to submit budget requests sufficient to fund those minimum strengths. It would also change the language in 10 U.S.C 115 to allow the Secretary of Defense and the Service Secretaries to reduce the personnel strength in certain active and reserve component categories below the authorized end-strength by a specified percentage.	

Discussion: The Administration request proposed continuing the reduction in strength for the Army (-15,000 compared to FY2015), although its proposed strengths for the other three services

⁵ The term “end-strength” refers to the authorized strength of a specified branch of the military at the end of a given fiscal year, while the term authorized strength means “the largest number of members authorized to be in an armed force, a component, a branch, a grade, or any other category of the armed forces”. 10 USC 101(b)(11). As such, end-strengths are maximum strength levels. Congress also sets minimum strength levels for the active component, which may be identical to or lower than the end-strength.

are essentially level or increasing in comparison to FY2015: Navy (+5,600), Marine Corps (-100), and Air Force (+4,020). The end-strengths authorized in the Senate bill are identical to the Administration request. The end-strengths authorized in the House bill are also identical to the Administration's end-strength request with the exception of the Air Force, which is 3,715 higher than the Administration's request.

The Senate bill also includes a provision, section 402, to repeal the section of the U.S. Code which stipulates that DOD budget for the congressionally directed minimum strength levels needed to carry out a national defense strategy focused on conducting two nearly simultaneous major regional contingencies. Section 402 would also allow the Secretary of Defense to reduce the number of personnel in an active component by up to 3% below the authorized end-strength, to reduce the number of full-time National Guard and Reserve personnel in a reserve component by up to 2%, and to reduce the number of National Guard and Reserve personnel performing active duty for operational support and certain other purposes by up to 10%.⁶ It would allow the Service Secretaries to decrease the number of personnel in an active component and in the Selected Reserve of a reserve component under their jurisdiction by up to 2% below the authorized end-strength.⁷

Reference(s): Previously discussed in CRS Report R43647, *FY2015 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Barbara Salazar Torreon and similar reports from earlier years.

CRS Point of Contact: Lawrence Kapp, x7-7609.

⁶ The Secretary of Defense already has the authority to “vary”—increase or decrease—the number of Selected Reserve personnel by up to 3%.

⁷ These authorities cannot be combined; rather, the Service Secretary authority, if exercised, is counted as part of the Secretary of Defense's authority. See 10 U.S.C. 115(g)(2).

*Selected Reserves End Strength

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 5% over the past 14 years (874,664 in FY2001 versus 829,800 in FY2015). Much of this can be attributed to the reductions 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), and Coast Guard Reserve (8,000).⁸ Between FY2001 and FY2015, the largest shifts in authorized end strength have occurred in the Navy Reserve (-31,600 or -35.5%), Air Force Reserve (-7,258 or -9.8%), and Coast Guard Reserve (-1,000 or -12.5%). A smaller change occurred in the Air National Guard (-3,022 or -2.8%) and Army Reserve (-3,300 or -1.6%), while the authorized end strength for the Army National Guard (-326 or -0.1%) and the Marine Corps Reserve (-358 or -0.9%) have been largely unchanged during this period.

House-Passed H.R. 1735	Senate-Passed H.R. 1735	Final
Section 411 authorizes a total FY2016 Selected Reserve end strength of 818,000 including:	Section 411 authorizes a total FY2016 Selected Reserve end strength of 818,000 including:	
Army National Guard: 342,000	Army National Guard: 342,000	
Army Reserve: 198,000	Army Reserve: 198,000	
Navy Reserve: 57,400	Navy Reserve: 57,400	
Marine Corps Reserve: 38,900	Marine Corps Reserve: 38,900	
Air National Guard: 105,500	Air National Guard: 105,500	
Air Force Reserve: 69,200	Air Force Reserve: 69,200	
Coast Guard Reserve: 7,000	Coast Guard Reserve: 7,000	

Discussion: For FY2016, the Administration requested a reduction in authorized Selected Reserve end strength for three of the seven reserve components. The proposed reductions in comparison to FY2015 are as follows: Army National Guard (-8,200), Army Reserve (-4,000), and Marine Corps Reserve (-300). The proposed change for the other reserve components are as follows: Navy Reserve (+100), Air National Guard (+500), Air Force Reserve (+2,100), and Coast Guard Reserve. The authorized strength for the Coast Guard Reserve was unchanged. The recommendations in both the House and Senate bills are identical to the Administration's request.

Reference(s): Previously discussed in CRS Report R43647, *FY2015 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Barbara Salazar Torreon, and similar reports from earlier years.

CRS Point of Contact: Lawrence Kapp, x7-7609.

⁸ P.L. 106-398, Section 411.

*Military Pay Raise

Background: Increasing concern with the overall cost of military personnel, combined with longstanding congressional interest in recruiting and retaining high quality personnel to serve in the all-volunteer military, have continued to focus interest on the military pay raise. Section 1009 of Title 37 provides a permanent formula for an automatic annual increase in basic pay that is indexed to the annual increase in the Employment Cost Index (ECI). The increase in basic pay for 2016 under this statutory formula would be 2.3% unless either: (1) Congress passes a law to provide otherwise; or (2) the President specifies an alternative pay adjustment under subsection (e) of 37 U.S.C. 1009.⁹

The FY2016 President’s Budget requested a 1.3% military pay raise, lower than the statutory formula of 2.3%. This is in keeping with Department of Defense (DOD) plans to limit increases in basic pay through FY2020. While estimating that the ECI will increase by 2.3% per year in each of the next four years, the DOD Budget Request Overview stated

outyear pay raise planning factors currently assume limited pay raises will continue through FY 2020, with increases of 1.3 percent in FY 2017, 1.5 percent in FY 2018 and FY 2019, and 1.8 percent in FY 2020.¹⁰

House-passed H.R. 1735	Senate-Passed H.R. 1735	Final
No provision relating to a general increase in basic pay.	<p>Sec. 601 (a) waives the statutory formula of 37 USC 1009 and 601(b) specifies a 1.3% increase in basic pay for servicemembers below the O-7 paygrade.</p> <p>Sec. 601(c) caps the pay of officers in paygrades O-7 through O-10 at the Executive Schedule Level II rate of pay in effect during 2014.</p>	

Discussion: The House bill contained no provision to specify the rate of increase in basic pay, although the report accompanying it (H.Rept. 114-102) contained the following statement:

The committee continues to believe that robust and flexible compensation programs are central to maintaining a high-quality, all volunteer, combat-ready force. Accordingly, the committee supports a 2.3 percent military pay raise for fiscal year 2016, in accordance with

⁹ Last year, Congress did not include a provision specifying an increase in basic pay; typically, that would have meant the automatic formula would have provided an increase equal to the ECI (1.8%). However, on August 29, 2014, President Obama sent a letter to Congress invoking 37 U.S.C. 1009(e) to set the pay raise for 2015 at 1.0%. The letter stated: “I have determined it is appropriate to exercise my authority under section 1009(e) of title 37, United States Code, to set the 2015 monthly basic pay increase at 1.0 percent.... The adjustments described above shall take effect on January 1, 2015.” Letter available at <http://www.whitehouse.gov/the-press-office/2014/08/29/letter-president-alternative-pay-plan-uniformed-services>.

¹⁰ Department of Defense Fiscal Year 2016 Budget Request Overview, February 2015, page 6-6 and Figure 6-3: http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2016/FY2016_Budget_Request_Overview_Book.pdf.

current law, in order for military pay raises to keep pace with the pay increases in the private sector, as measured by the Employment Cost Index.¹¹

The Senate version contains a provision waiving the automatic adjustment of 37 U.S.C. 1009 and setting the pay increase at 1.3% for servicemembers below the O-7 paygrade (that is, below the grade of brigadier general or, for the Navy, rear admiral lower half). The Senate version would also maintain the cap on the pay of officers in the O-7 through O-10 paygrades at the Executive Schedule level II rate for 2014, thereby ensuring that no general or flag officers receive an increase in basic pay.

Reference(s): Previously discussed in CRS Report R43647, *FY2015 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Barbara Salazar Torreon, and similar reports from earlier years.

CRS Point of Contact: Lawrence Kapp, x7-7609.

¹¹ H.Rept. 114-102, p. 151.

*Military Retirement System

Background: The military retirement system is a funded, noncontributory, defined benefit system that provides a monthly annuity to servicemembers after 20 years of qualifying service.¹² The National Defense Authorization Act (NDAA) for FY2013 (P.L. 113-66) established a Military Compensation and Retirement Modernization Commission (MCRMC) to provide the President and Congress with specific recommendations to modernize pay and benefits for the armed services. The Commission delivered its final report and recommendations to Congress on January 29, 2015. Congress has included many of the Commission’s proposed changes in the FY2016 NDAA.

House-Passed H.R. 1735	Senate-Passed H.R. 1735	Final
<p>Sec. 631 would automatically enroll new servicemembers in the Thrift Savings Plan (TSP) with government contributions of 1% of basic pay and would allow government matching contributions up to 5% of member’s basic pay starting at 2 years of service (YOS) until retirement.</p> <p>Sec. 632 would reduce the defined benefit multiplier from 2.5% to 2.0% at 20 YOS. This section would also delay the Cost of Living Allowance (COLA) reductions for retired pay until October 1, 2017.</p> <p>Sec. 633 would authorize continuation pay at 12 YOS for an additional 4 years of obligated service.</p> <p>Sec. 634 would require all retirement system changes to apply to servicemembers entering service on or after October 1, 2017.</p>	<p>Sec. 631 would automatically enroll new servicemembers in the Thrift Savings Plan (TSP) with government contributions of 1% of basic pay beginning 60 days after entering service and would allow government matching contributions up to 5% of member’s basic pay starting after 2 years of service (YOS) until 20 YOS for servicemembers entering service on or after January 1, 2018.</p> <p>Sec. 632 would reduce the defined benefit multiplier from 2.5% to 2.0% at 20.</p> <p>Sec. 633 would allow lump sum payment of retired pay.</p> <p>Sec. 634 would authorize continuation pay at 12 YOS for an additional 4 years of obligated service.</p> <p>Sec. 635 would allow DOD to modify YOS requirements for particular occupation specialties with Congressional notification.</p>	

Discussion: The military retirement system has historically been viewed as a significant incentive in retaining a career military force and any changes are closely followed by active duty military and veteran’s groups. The House and Senate versions of the FY2016 NDAA would change the existing system from a defined-benefit system that is vested at 20 years of qualifying service, to a blended defined-benefit, defined-contribution system with government matching contributions through the Thrift Savings Plan. While the Senate version would stop government matching contributions at 20 years of qualifying service, the House version would allow matching contributions for the duration of service. Both versions would reduce the multiplier for the defined benefit to 2.0% from 2.5% (a retirement annuity equal to 40% basic pay at 20 YOS rather than 50% of basic pay) and would authorize continuation pay at 12 years of service as a retention

¹² Disability retirees may be eligible for retired pay prior to 20 years of service.

incentive. The Senate version would also allow a lump-sum payment of the retired pay that the servicemember would be eligible to receive prior to becoming eligible for Social Security. Existing servicemembers and all those entering the military prior to October 1, 2017 in the House version or January 1, 2018 in the Senate version would be grandfathered into the current system but would be given an opportunity to opt into the new system. The Senate version would also give enhanced flexibility to DOD to modify the YOS requirement for particular occupational specialties with Congressional notification (1-year) prior to implementation. Under the House version the retired pay Cost of Living Allowance (COLA) adjustments first enacted by the Bipartisan Budget Act of 2013 (P.L. 113-67 §403) would affect those who join the Armed Forces on or after October 1, 2017 (from the previous date of implementation, January 1, 2016), while the Senate version does not have a provision regarding the COLA reduction.

References: CRS Report RL34751, *Military Retirement: Background and Recent Developments*, by Kristy N. Kamarck; CRS Report IF10141, *Proposed Changes to the Military Retirement System*, by Kristy N. Kamarck; CRS Report R43393, *Reducing Cost-of-Living Adjustments for Military Retirees and the Bipartisan Budget Act: In Brief*, by Amy Belasco and Lawrence Kapp.

CRS Point of Contact: Kristy N. Kamarck, x7-7783.

*Sexual Assault

Background: Over the past few years, the issue of sexual assault in the military has generated a good deal of congressional and media attention. Congress has enacted numerous changes in previous NDAAAs, but issues remain. The House and Senate versions contain numerous provisions regarding sexual assault in the military and differ substantially between bills.

House-Passed H.R. 1735	Senate-Passed H.R. 1725	Final
<p>Procedural Issues</p> <p>Sec. 544 would allow special victim's counsel (SVC) representation at retaliatory proceedings related to the victim's report of the offense.</p> <p>Sec. 545 would require timely notification to a victim of a sex-related offense of the availability of SVC.</p> <p>Sec. 546 would extend certain rights and protections to a victim of a sex-related offense in any punitive proceedings.</p> <p>Sec. 547 would allow victim access to report of results of preliminary hearing under Article 32 of the Uniform Code of Military Justice.</p> <p>Sec. 548 would establish a minimum mandatory confinement period of 2 years for those convicted of certain sex-related offenses.</p> <p>Sec. 552 would amend 10 U.S.C. §47, Uniform Code of Military Justice (UCMJ) to require consistent preparation of the full record of trial.</p> <p>Sec. 554 would require DOD to retain case notes for all investigations of sex-related offenses.</p> <p>Sec. 555 would establish guidance regarding the release of mental health records of a victim in a sex-related offense.</p> <p>Policies and Programs</p> <p>Sec. 541 would require the Secretary of Defense to make certain improvements to the Special Victims' Counsel Program.</p> <p>Sec. 542 would allow access to SVC services for DOD civilian employees.</p> <p>Sec. 543 would allow access to SVC services for certain former</p>	<p>Procedural Issues</p> <p>Sec. 547 would protect members serving as SVC from less favorable evaluations in relation to Courts-Martial representation.</p> <p>Sec. 551 would allow victims to be assisted by SVC when questioned by military criminal investigators.</p> <p>Sec. 552 would allow SVC to provide legal consultation in Freedom of Information Act requests and in complaints against the government.</p> <p>Sec. 546 would modify the military rules of evidence pertaining to corroboration of a confession or admission of the accused.</p> <p>Sec. 548 would allow victims of UCMJ offenses timely access to certain materials and information in relation to the offense.</p> <p>Sec. 549 would enhance enforcement of victims' rights regarding inadmissible evidence.</p> <p>Sec. 550 would allow victims to access complete records of courts-martial proceedings in cases where sentences could include punitive discharge.</p> <p>Sec. 553 would enhance the confidentiality of restricted reports of sexual assault in the military.</p> <p>Policies and Programs</p> <p>Sec. 554 would establish an office of complex investigation within the National Guard Bureau.</p> <p>Data, Reports, and Committees</p> <p>Sec. 555 would shorten the deadline for establishment of a defense advisory committee on investigation, prosecution, and defense of sexual assault in the Armed Forces.</p>	

House-Passed H.R. 1735	Senate-Passed H.R. 1725	Final
dependents and former servicemembers.	Sec 556 would require the Comptroller General to report on sexual assault in the Army National Guard and Army Reserve.	
Sec. 549 would require DOD to develop a strategy to prevent retaliation against members who report or intervene on behalf of a victim of sexual assault.	Sec 557 would initiate a dialog between Congress and DOD to determine the best way to protect family members from adverse effects of sentencing that requires forfeiture of military benefits.	
Sec. 550 would require improved prevention and response to sexual assaults of male victims.		
Sec. 551 would require sexual assault prevention and response training for Junior and Senior Reserve Officer Training Units (ROTC).		
Sec. 556 would require public availability of certain UCMJ proceedings.		
Data, Reports, and Committees		
Sec. 553 would require additional annual reporting requirements for DOD to include cases under the DOD Family Advocacy Program, and information on retaliation.		
Sec. 557 would require DOD to develop a database to track sex offenders.		
Sec. 558 would require improved implementation of UCMJ changes.		

Discussion: The FY2014 DOD Annual Report on Sexual Assault in the Military reported that an estimated 4.3% of women and 0.9% of men in the military experienced unwanted sexual contact in 2014 based on survey data. Of those who reported unwanted sexual contact, 53% perceived some sort of social retaliation. The types of social retaliation that were reported included adverse administrative action (35%), professional retaliation (32%), and punishment for an infraction in relation to their report (11%).¹³ A recent report by the Government Accountability Office (GAO) also identified a need for the DOD to enhance its efforts to improve the effectiveness of care provided to male sexual assault victims.¹⁴ The FY2016 NDAA provisions would address some of these concerns about retaliation and male victims of sexual assault victims. These provisions would also enhance the Special Victims' Counsel Program, and would modify requirements for judicial proceedings, reporting and sentencing in sex-related offenses.

References: Previously discussed in CRS Report R43647, *FY2015 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Barbara Salazar Torreon. See also CRS Report R43168, *Military Sexual Assault: Chronology of Activity in Congress and*

¹³ Some respondents perceived more than one type of retaliation. Department of Defense Sexual Assault and Prevention Office, *Department of Defense Annual Report on Sexual Assault in the Military*, April 29, 2015, p. 44.

¹⁴ U.S. Government Accountability Office, *Military Personnel: Actions Needed to Address Sexual Assaults of Male Servicemembers*, GAO-15-284, March 19, 2015.

Related Resources, by Barbara Salazar Torreon; CRS Report R43213, *Sexual Assaults Under the Uniform Code of Military Justice (UCMJ): Selected Legislative Proposals*, by R. Chuck Mason.

CRS Point of Contact: Kristy N. Kamarck, x7-7783.

*Gender Integration

Background: On January 24, 2013, then-Secretary of Defense Leon Panetta announced that the Department of Defense (DOD) was rescinding its 1994 Direct Combat Exclusion Rule to allow women to serve in previously restricted combat occupations. The military departments are expected to notify Congress of their plans for integrating women into combat roles by January 1, 2016.

House-Passed H.R. 1735	Senate-Passed H.R. 1735	Final
<p>Sec. 533 would reduce the required congressional notification and waiting time for implementation of changes to assignment policies for women.</p> <p>Sec. 534 would add a requirement that occupational standards measure the combat readiness of combat units.</p>	<p>Sec. 523 expresses the sense of the Senate that the development of gender-neutral occupational standards should be based on best scientific practices, should not result in unnecessary barriers to service, should be objectively determined, and should not negatively impact required combat capabilities.</p>	

Discussion: In National Defense Authorization Act for Fiscal Year 1994 (P.L. 103-160) Congress established a definition for “gender-neutral” occupational performance standards and has in subsequent years directed DOD in how these standards should be developed and applied. Section 524 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (P.L. 113-291), entitled “Removal of artificial barriers to the service of women in the Armed Forces,” emphasizes that the standards DOD uses to measure performance must be related to the “actual, regular, and recurring duties” in a specific military occupation and standards must measure “individual capabilities.” The House version would add additional criteria for developing performance standards relating to combat unit readiness that could require DOD to undertake validation efforts for unit-level performance. The Senate version would not add additional criteria for occupational performance standards in law, but it does also emphasize the Senate’s desire for the standards to be tied to combat capabilities.

Under the current law, DOD must notify Congress of changes to assignment policies for females, at which time Congress has a period of 30 days in continuous session (House and Senate) for review of these changes before DOD can take any action on implementing them (this provision is sometimes referred to as “notify-and-wait”). Section 533 of the House version would shorten this waiting period to 30 calendar days. For DOD, this would provide a more definitive timeline for implementation. For Congress this could reduce the amount of in-session time to review and act on proposed changes. The Senate version does not include a provision to change the “notify and wait” requirement.

References: Previously discussed in CRS Report R43647, *FY2015 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Barbara Salazar Torreon. See also, CRS Report IN10273, *FY2016 NDAA: What is in the House Committee Reported Bill (H.R. 1735) Regarding Women in Combat?*, by Kristy N. Kamarck CRS Report R42075, *Women in Combat: Issues for Congress*, by Kristy N. Kamarck.

CRS Point of Contact: Kristy N. Kamarck, x7-7783.

Financial Literacy and Preparedness of Servicemembers

Background: One of the findings of the congressionally mandated (P.L. 113-66) Military Compensation and Retirement Modernization Commission (MCRMC) was that weaknesses in existing financial literacy programs for military servicemembers were potentially linked to adverse effects on servicemembers, military families, and overall readiness.

House-Passed H.R. 1735	Senate-Passed H.R. 1735	Final
Sec. 651 would require financial literacy training at certain points in a servicemember's career and would require an annual survey of financial literacy and preparedness for members of the armed forces.	<p>Sec. 581 would require financial literacy training at certain points in a servicemember's career and would require an annual survey of financial literacy and preparedness for members of the armed forces.</p> <p>Sec. 582 would require training to commence no later than six months after enactment.</p> <p>Sec. 583 expresses the sense of Congress that DOD should strengthen arrangements with other entities to provide training and support.</p>	

Discussion: Enhancing personal financial management training programs would require some initial costs; however, DOD has estimated that improved financial literacy could save the DOD between \$13 million and \$137 million annually and could reduce the number of troops involuntarily separated due to financial distress.¹⁵ Potential changes to the military retirement system that would offer more options for retirement savings and continuation pay might also necessitate enhanced financial management training. Both House and Senate versions of the FY2016 NDAA include provisions that would require financial literacy training upon entry into the service, and at various points in the servicemember's career due to life changes (e.g., marriage or divorce) or transitions (e.g. change of duty station or promotion).

CRS Point of Contact: Kristy N. Kamarck, x7-7783.

¹⁵ Military Compensation and Retirement Modernization Commission Final Report, January 2015.

Citizenship Requirements for Enlistment in the Reserve Components

Background: The statutory requirements for enlistment in the active component (10 U.S.C. §504) are slightly different than the statutory requirements for enlistment in the reserve components (10 U.S.C. §12102). Under 10 U.S.C. §504, an individual must be: (1) a national of the United States (i.e., either a citizen or a person who, though not a citizen of the United States, owes permanent allegiance to the United States - a category that currently includes only American Samoans); (2) a lawful permanent resident; or (3) a person described in the Compact of Free Association between the United States and Micronesia, the Marshall Islands, and Palau. 10 U.S.C. § 504 also contains a provision that allows the Secretary to provide exceptions “if the Secretary determines that such enlistment is vital to the national interest” (this provision is the basis of the Military Accessions Vital to National Interest or MAVNI program). 10 U.S.C. §12102 specifies that an enlistee must be (1) a citizen of the United States; (2) a lawful permanent resident; or (3) have previously served in the armed forces.

House-Passed H.R. 1735	Senate-Passed H.R. 1735
No similar provision.	Sec. 513 amends 10 U.S.C. § 12102 (b) by striking paragraphs (1) and (2) and inserting the following paragraphs: “(1) that person has met the citizenship or residency requirements established in section 504(b)(1) of this title; or “(2) that person is authorized to enlist by the Secretary concerned under section 504(b)(2) of this title.”.

Discussion:

Section 513 of the Senate bill would link the statutory requirements for eligibility to enlist in the reserve component with the requirements necessary to enlist in the active component.

Reference(s): None.

CRS Point of Contact: Lawrence Kapp, x7-7609

Termination of Educational Assistance for Reserve Component Members Supporting Contingency Operations and Other Operations

Background: In 2004, Congress established the Reserve Educational Assistance Program (REAP) to provide enhanced educational benefits to reservists who were called or ordered to active service in response to a war or national emergency declared by the President or the Congress. Four years later, Congress approved the Post-9/11 GI Bill, which provided more generous educational benefits than REAP. As a result, the Military Compensation and Retirement Modernization Commission recommended terminating REAP, while allowing those currently receiving REAP benefits to exhaust their entitlement.

House Passed H.R. 1735	Senate Passed H.R. 1735
No similar provision.	Section 532 amends Chapter 1607 of Title 10 U.S.C. by inserting a sunset clause, terminating REAP four years after enactment of the FY16 NDAA. Additionally, upon enactment of the bill, REAP benefits would be limited to those who were receiving REAP benefits “for a course of study at an educational institution for the enrollment period at the educational institution that immediately preceded the date of the enactment of that Act.”

Discussion: The Senate version adopts the recommendations proposed by the Military and Compensation and Retirement Modernization Commission by establishing a sunset date for REAP four years after the date of enactment of the National Defense Authorization Act for Fiscal Year 2016, and stipulates that in the interim period, only those using REAP in the enrollment period immediately prior to the date of enactment can continue to use the program.

Reference(s): For more information on REAP and the Post 9/11 GI Bill, generally, see CRS Report RL30802, *Reserve Component Personnel Issues: Questions and Answers*, by Lawrence Kapp and Barbara Salazar Torreon. For more detailed information, see CRS Report R42785, *GI Bills Enacted Prior to 2008 and Related Veterans’ Educational Assistance Programs: A Primer*, by Cassandra Dortch, and CRS Report R42755, *The Post-9/11 Veterans Educational Assistance Act of 2008 (Post-9/11 GI Bill): Primer and Issues*, by Cassandra Dortch.

CRS Point of Contact: Lawrence Kapp, x7-7609

Issuance of Recognition of Service ID to Certain Members Separating from the Armed Forces

Background: There have been periodic requests from veterans and veterans advocacy groups for an official identification card to verify their past military service.

House Passed H.R. 1735	Senate Passed H.R. 1735
No similar provision	Section 590 (a) of S. 532 orders the Secretary of Defense to provide covered individuals with an “Recognition of Service ID Card” that includes a photo of the individual, their name, and identifies them as a veteran.

Discussion: The Senate bill would entitle any “individual who is undergoing discharge or release from the Armed Forces” (other than as the result of a punitive discharge as part of a sentence of a court-martial) beginning one year from the enactment of the Act to a “Recognition of Service ID Card.” This card must identify the bearer as a veteran and include their name and a photograph. The Act also authorizes the Secretary of Defense to negotiate with “national retail chains that offer reduced prices on services, consumer products, and pharmaceuticals to veterans” to ensure that the ID card will be accepted.

On July 20, 2015, President Obama signed into law H.R. 91, the Veterans Identification Card Act 2015. This law requires the Secretary of Veterans Affairs to provide an identification card to veterans who demonstrate their military service with a DD-214 or other official document.

Reference(s): None.

CRS Point of Contact: Lawrence Kapp, x7-7609

Temporary Authority to Develop and Provide Additional Recruitment Incentives

Background: Congress has an ongoing interest in recruiting and retaining high quality personnel to serve in the armed forces. The use of recruiting bonuses and other incentives, such as educational benefits, help the military services attract well qualified applicants. A wide array of bonus and incentive pay authorities are contained in chapter 5 of Title 37 of the United States Code.

House Passed H.R. 1735	Senate Passed H.R. 1735
Sec. 531 would authorize the Secretaries of military departments to develop and provide additional recruitment incentives (no more than three types) for up to 20% of the fiscal year accession target for officers, warrant officers, and enlisted personnel. Implementation of the proposed incentive would be subject to a 30-day congressional review and approval period.	No similar provision.

Discussion: Sec. 531 of the House-passed bill would authorize the Secretaries of military departments to develop and provide additional recruitment incentives (no more than three types) for up to 20% of the fiscal year accession target for officers, warrant officers, and enlisted personnel. Implementation of the proposed incentive would be subject to a 30-day congressional review and approval period.

Reference(s): More information on recruitment and retention can be found in CRS Report RL32965, *Recruiting and Retention: An Overview of FY2013 and FY2014 Results for Active and Reserve Component Enlisted Personnel*, by Lawrence Kapp, and similar reports from earlier years.

CRS Point of Contact: Lawrence Kapp, x7-7609

Recognition of Additional Involuntary Mobilization Duty Authorities Exempt From Five-Year Limit on Reemployment Rights of Persons Who Serve in the Uniformed Services

Background: When reservists are called into active federal service, they become eligible for a number of legal protections. Among these is the right to reemployment found in the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994.¹⁶ The act confers a general right to reemployment to those who leave civilian employment to perform military service, but the cumulative length of service generally cannot exceed five years. However, USERRA specifically exempts types of duty from counting towards the five year limit; for example, reservist activations under the long-standing activation authorities known as Full Mobilization, Partial Mobilization, and Presidential Reserve Call-Up. In 2011, Congress created two new mobilization authorities for reservists in the National Defense Authorization Act for Fiscal Year 2012 (P.L. 112-81). Codified at 10 U.S.C. 12304a and 12304b, these new activation authorities allow 120-day activations of certain reservists for disaster response and 365 day activations for preplanned missions in support of the combatant commands (12304a). At present, activations under these new authorities are not excepted from the five year cumulative limit.

House Passed H.R. 1735	Senate Passed H.R. 1735
Section 565 amends Section 4312(c)(4)(A) of Title 38, U.S.C., by adding 10 U.S.C. 12304a and 12304b to the types of reserve activations that do not count towards the 5 year length of service limitation in USERRA.	No similar provision.

Discussion: Section 565 of the House bill would exempt military duty under the new reserve activation authorities from counting towards the cumulative five year limit on military service for reemployment protection under USERRA.

Reference(s): For more information on USERRA and the mobilization authorities, please see CRS Report RL30802, *Reserve Component Personnel Issues: Questions and Answers*, by Lawrence Kapp and Barbara Salazar Torreon.

CRS Point of Contact: Lawrence Kapp, x7-7609

¹⁶ 38 U.S.C. §4312(a), confers reemployment rights to members of the uniformed services as long as the servicemember has provided advance notice of their service to the employer, the cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years, and that the servicemember reapplies for employment.

Honoring Certain Members of the Reserve Component as Veterans

Background: By statute (38 U.S.C. 101(2)), a veteran is defined as a “person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.” Thus, an individual must have “active military, naval, or air service” to be considered a veteran for most VA benefits. However, not all types of service are considered active military service for this purpose. In general, active service means full-time service, other than active duty for training, as a member of the Army, Navy, Air Force, Marine Corps, and Coast Guard; as a commissioned officer of the Public Health Service; or as a commissioned officer of the National Oceanic and Atmospheric Administration or its predecessors. Active service also includes a period of active duty for training during which the person was disabled or died from an injury or disease incurred or aggravated in the line of duty and any period of inactive duty for training during which the person was disabled or died from an injury incurred or aggravated in the line of duty or from certain health conditions incurred during the training. Additional circumstances of service, and whether they are deemed to be active military service, are set out in law. Members of the National Guard and reserves who are never activated for active duty military service (other than active duty for training) do not meet the statutory definition of veteran even if they eventually qualify for reserve retirement.

House Passed H.R. 1735	Senate Passed H.R. 1735
Section 592 would amend Title 38 U.S.C., specifying that reservists who qualify for retired pay for non-regular (reserve) service, or would qualify but for age, “shall be honored as a veteran but shall not be entitled to any benefit by reason of this section.”	No similar provision.

Discussion: Reservists become eligible for retirement after 20 years of qualifying service. Under current law, a reservist who completes this requirement is eligible to retire and would receive retired pay upon reaching the appropriate age (usually age 60); however, the reservists would not necessarily be a veteran unless he or she had completed the required active service as well. The House bill provides that reservists who qualify for reserve retirement are to be “honored as veterans,” but stipulates that this designation shall not confer entitlement to any additional benefits.

Reference(s): For information on who qualifies as a veteran, see CRS Report R42324, *Who is a “Veteran”?*—*Basic Eligibility for Veterans’ Benefits*, by Noah P. Meyerson. For information on the Reserve Component and retirement and other benefits, please see CRS Report RL30802, *Reserve Component Personnel Issues: Questions and Answers*, by Lawrence Kapp and Barbara Salazar Torreon.

CRS Point of Contact: Lawrence Kapp, x7-7609 and Noah Meyerson, x7-4681.

Career Intermission Program (CIP)

Background: The Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (P. L. 110–417, §533) established a pilot Career Intermission Program (CIP) as a retention initiative that authorized 20 officers and enlisted per year to take time out (up to three years) from their military career to address work/life balances (e.g., starting a family or taking care of a sick parent) or to pursue broadening opportunities (e.g., graduate school or industry experience) and to return to active duty in a later year group, so as to not negatively impacting their military career progression.

House-Passed H.R. 1735	Senate-Passed H.R. 1735	Final
No provision.	Sec. 522 would remove certain eligibility requirements and the current cap on the number of servicemembers eligible to take part in the career intermission program.	

Discussion: DOD invests substantial resources in recruiting and training servicemembers and has an interest in retaining high-performers. The CIP was initiated to provide more career flexibility for high-performing servicemembers and to increase retention rates for those who might otherwise leave the service. Servicemembers who are accepted into the program accept an additional active duty service obligation of two months for every one month that is spent in CIP (for a maximum six year follow-on obligation). DOD is required to submit a final report to Congress on an assessment of the pilot program not later than March 1, 2016.

CRS Point of Contact: Kristy N. Kamarck, x7-7783.

Acquisition Workforce

Background: Over the past few years, Congress has been concerned with how to improve the recruitment, retention, and career management for the acquisition workforce.¹⁷ Although there is a long history of acquisition reform, issues still remain.

House-Passed H.R. 1735	Senate-Passed H.R. 1735	Final
<p>Sec. 812 would establish a dual-track career path that allows for servicemembers to receive credit for a primary career in combat arms and a functional secondary career in the acquisition field.</p> <p>Sec. 813 would provide joint duty assignment credit for acquisition duty.</p>	<p>Sec. 503 would establish a dual-track career path that allows for servicemembers to receive credit for a primary career in combat arms and a functional secondary career in the acquisition field, and would provide joint duty credit for acquisition duty.</p>	

Discussion: Military acquisition professionals oversee billions of dollars of funding for major defense acquisition programs and many in Congress and DOD have an interest in ensuring a cadre of high-performing and qualified personnel for acquisition duty assignments. Provisions in both the House and Senate versions would provide career incentives (e.g., joint duty credit) for military personnel to pursue acquisition assignments.

CRS Point of Contact: For military personnel issues contact Kristy N. Kamarck, x7-7783; for defense acquisition issues contact Moshe Schwartz, x7-1463.

¹⁷ For the purpose of this report we have only discussed provisions pertaining to military personnel and not those pertaining to DOD civilians in the acquisition workforce.

Personal Firearms on Military Installations

Background: Section 1585 of Title 10, United States Code authorizes the Secretary of Defense to prescribe policy and regulations regarding the carrying of firearms for DOD civilian employees and military servicemembers. Current DOD policies limit the carrying of government-issued firearms on military installations to personnel engaged in policing or security duties.¹⁸ By policy, it is prohibited for military servicemembers to carry personal firearms (concealed or open carry) on military bases and installations while on duty and under most other circumstances.

House-Passed H.R. 1735	Senate-Passed H.R. 1735	Final
Sec. 539 would require DOD to establish a process that would allow senior leadership on military installations to authorize concealed carry of personal firearms for qualified servicemembers.	No provision.	

Discussion: On July 16, 2015, a Marine Corps recruiting center and U.S. Naval Reserve Center were attacked by an armed shooter. This has followed other active shooter incidents on military installations, for example, the 2009 and 2014 shootings at Fort Hood, Texas, and the 2013 Washington Navy Yard shooting. Following the most recent incident, some have questioned whether force protection measures at military installations are adequate and whether current DOD policies and regulations should be modified to broaden the authority for servicemembers to carry personal or government-issued firearms. The House-passed version of H.R. 1735 would compel DOD to initiate a process that would give more flexibility to installation commanders to establish protocols for concealed carry of personal firearms for servicemembers provided that they maintain certain qualifications.

References: CRS Report IN10318, Can Military Servicemembers Carry Firearms for Personal Protection on Duty?, by Kristy N. Kamarck and Heidi M. Peters.

CRS Point of Contact: Kristy N. Kamarck, x7-7783.

¹⁸ Department of Defense Directive, “Carrying of Firearms and the Use of Force by DOD Personnel Engaged in Security, Law and Order, or Counterintelligence Activities”, DODD 5210, April 1, 2011.

*Award of the Purple Heart to members of the Armed Forces who were victims of the Oklahoma City, OK, bombing

Background: The Purple Heart is awarded to any member of the Armed Forces who has been (1) wounded or killed in action against an enemy while serving with friendly forces against a belligerent party as the result of a hostile foreign force while serving as a member of a peacekeeping force while outside the United States; or (2) killed or wounded by friendly fire under certain circumstances. On April 19, 1995, a domestic terrorist bomb attack on the Alfred P. Murrah Federal Building in downtown Oklahoma City, OK, killed 168 people and injured more than 650 including six servicemembers killed in the Army Recruiting Battalion on the fourth floor and in the Marine Corps Recruiting office on the sixth floor. At the time, these servicemembers were ineligible for the Purple Heart based on the criteria listed above. Eligibility was expanded in the FY2015 NDAA (P.L. 113-291) to include servicemembers wounded and killed in 2009 during the terrorist attack at Fort Hood, TX, and supporters of Sec. 583 of the House-passed NDAA for FY2016 contend that the servicemembers killed in the Oklahoma City bombing were also victims of terrorism and therefore eligible for the Purple Heart.

House-Passed H.R. 1735	Senate-Passed H.R. 1735	Final
Section 583 would award the Purple Heart to members of the Armed Forces who were victims of the Oklahoma City, Oklahoma, bombing.	No provision	

Discussion: Authorities treated the 2009 shootings at Little Rock, AR, and Fort Hood, TX, as criminal acts and not acts perpetrated by an enemy or hostile force. Yet, because these acts involved Muslim perpetrators angered over U.S. actions in Iraq and Afghanistan, some believe they should be viewed as acts of terrorism. Still others were concerned that awarding the Purple Heart in these situations could have anti-Muslim overtones. However, Sec. 571 of the NDAA for FY2015 (P.L. 113-291) expanded the eligibility for the Purple Heart by redefining what should be considered an attack by a “foreign terrorist organization” for purposes of determining eligibility for the Purple Heart. The law states that an event should be considered an attack by a foreign terrorist organization if the perpetrator of the attack “was in communication with the foreign terrorist organization before the attack” and “the attack was inspired or motivated by the foreign terrorist organization.” It would also allow for eligible DOD civilian employees and contractors, wounded or killed in the same attack, to be awarded the Secretary of Defense Medal for the Defense of Freedom. On February 6, 2015, Army Secretary John M. McHugh announced the awarding the Purple Heart and the Defense of Freedom Medal to victims of a 2009 shooting at Fort Hood, TX,¹⁹ and on April 10, 2015, Purple Hearts were presented to the military victims and families of the Fort Hood shooting and the Defense of Freedom Medals to DOD civilians and their families. Sec. 583 of the House-passed NDAA for FY2016 would allow six members of the

¹⁹ DOD News, “Army Approves Purple Hearts for Fort Hood Shooting Victims,” February 6, 2015, at <http://www.defense.gov/news/newsarticle.aspx?id=128129&source=GovDelivery>; and “Army Extends Benefits to Hood Shooting Victims,” *Army Times*, April 16, 2015, at <http://www.armytimes.com/story/military/pentagon/2015/04/16/fort-hood-purple-heart-benefits/25874715/>

U.S. armed forces killed during the bombing of the Murrah Federal Building in Oklahoma City on April 19, 1995, to be awarded the Purple Heart posthumously. Proponents for awarding the Purple Heart to these victims of the Oklahoma City bombing cite Sec. 571 of the FY2015 NDAA as precedent for the Oklahoma City's victims while opponents contend that the bombing was an act of domestic terrorism and does not meet the eligibility requirements.

The recent shootings on July 16, 2015, at a Marine Corps recruiting center and U.S. Naval Reserve Center in Chattanooga, TN, has again raised congressional interest in the eligibility for the Purple Heart for servicemembers wounded or killed during an attack inspired or motivated by international terrorist organizations.

References: CRS Report R43647, *FY2015 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Barbara Salazar Torreon; and CRS Report R42704, *The Purple Heart: Background and Issues for Congress*, by David F. Burrelli.

CRS Point of Contact: Barbara Salazar Torreon, Analyst in Defense Budget and Military Manpower, x7-8996.

*Transfer and Adoption of Military Animals

Background: The issue of military working dogs (MWDs) has received congressional and media attention over the years with Congress enacting laws and provisions in the NDAA related to the transfer and adoption of MWDs. In November 2000, Congress passed “Robby’s Law” (P.L. 106-446,) “To require the immediate termination of the Department of Defense practice of euthanizing military working dogs at the end of their useful working life and to facilitate the adoption of retired military working dogs by law enforcement agencies, former handlers of these dogs, and other persons capable of caring for these dogs.” Congress also included language that limited liability claims arising from the transfer of these dogs. The NDAA for FY2012 (Sec. 351, P.L. 112-81) expanded the eligibility list to adopt MWDs to include the handler (if wounded or retired), or a parent, spouse, child, or sibling of the handler if the handler is deceased. Military working dogs were classified as “equipment”²⁰ and eligible individuals interested in adopting one of these dogs paid for transporting the MWD stateside. On January 2, 2013, Congress passed the NDAA for FY2013 (P.L. 112-239) that included a provision in Sec. 371 that a retiring MWD “may” be transferred to the 341st Training Squadron (in Lackland, Texas, where MWDs are trained) or to another location for adoption. The current law (10 USC 2583) does not require DOD to transfer MWDs that are “retired” overseas back to the United States.

House-Passed H.R. 1735	Senate-Passed H.R. 1735	Final
Section 594 amends Section 2583(a) of title 10 USC by striking “may” in the matter preceding paragraph (1) and inserting “shall” and amends the list of authorized persons to adopt a military animal and prioritizes the list of persons eligible to adopt.	Sec. 352 amends section 2583 of title 10, USC to give preference in the adoption of retired military working dogs to their former handlers.	

Discussion: Both Sec. 594 of the House-passed and Sec. 352 of the Senate-passed versions of the NDAA for FY2016 have similar language that would require DOD to transfer retiring MWDs abroad to the United States. Sec. 594 of the House-passed version would require DOD to transfer the retiring military animal after their tours of duty to the United States and amends the list of authorized persons available to adopt a military animal by priority to 1) former handlers; 2) law enforcement agencies; and 3) other persons capable of caring for the animal including the immediate family (parent, child, spouse or sibling) of a handler killed or wounded in action. Similarly, Sec. 352 of the Senate-passed version would mandate the DOD to transfer retiring military working dog to U.S. soil from abroad and give preference for adoption to former handlers and their families. This section, however, does not alter existing military policy allowing law enforcement agencies to adopt military working dogs. Advocates of MWDs contend that if the NDAA language is changed to “shall” instead of “may” then all military working dogs will be retired only after they are returned to the United States. If the language is changed to allow these dogs to retire in the United States then private organizations may be able to arrange for domestic transfer of these dogs to handlers, former handlers, law enforcement, and others who qualify to adopt them. Opponents maintain that it would be costly and there are no appropriated funds that would allow for the transfer of all retiring MWDs.

²⁰ Air Force Instruction (AFI) 31-126, *Military Working Dog Program*, was updated June 1, 2015, and eliminates any mention of military working dogs as “equipment.”

References: CRS Report R42651, *FY2013 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by Catherine A. Theohary, and AFI 31-126, *Military Working Dog Program*, June 1, 2015.

CRS Point of Contact: Barbara Salazar Torreon, Analyst in Defense Budget and Military Manpower, x7-8996.

*Defense Commissary System

Background: Over the past few years, Congress has been concerned with how to improve the Defense Commissary system but there have been no legislated changes. In the NDAA for FY2015, there were no provisions in either the House or Senate passed versions to reduce the Commissary’s budget unlike the President’s FY2015 budget proposal to cut the budget by \$1 billion over a three-year period beginning with \$200 million reduction in FY2015. However, commissary funding was fully restored in the FY2015 NDAA final version which added \$100 million to the commissary budget to reverse the Administration’s budget proposal and a requirement for a study of possible cost reductions. Similar to the FY2015 budget request, the President’s FY2016 budget request would cut \$300 million in subsidies for commissaries, cutting the commissary budget from \$1.3 billion to \$400 million in three years, with only funds to stateside commissaries being cut.²¹ The reduced subsidies could result in a reduction in operating days and hours for commissary patrons, and might increase costs for some goods and services. Authorized patrons include active duty military members, Guard and Reserve component members, retired personnel and their families, 100% disabled veterans, Medal of Honor recipients, and DOD civilians stationed at U.S. installations overseas.

House-Passed H.R. 1735	Senate-Passed	Final
<p>Sec. 641 would ensure that there are no changes to the current secondary destination transportation policy that applies to fresh fruit and vegetables for commissaries in Asia and the Pacific until the Defense Commissary Agency (DeCA) conducts a comprehensive study on locating fresh supplies from local sources in the region. The recommendations from this study would then be submitted to Congress.</p> <p>Section 642 would prohibit replacement or consolidation of defense commissary and exchange systems pending submission of required report on defense commissary system.</p>	<p>Sec. 651 would amend 10 U.S.C. § 2483 on operating expenses and transportation costs for certain goods and supplies in commissary stores worldwide, applying surcharges and attaining uniform system-wide pricing.</p> <p>Section 652 directs the Secretary of Defense to submit a plan no later than March 1, 2016 for privatizing the Defense Commissary system, and to begin a 2-year pilot program on the basis of that report.</p> <p>Section 653 directs the Comptroller General of the United States report on the Commissary Surcharge, Non-appropriated Fund, and Privately-Financed Major Construction Program.</p> <p>Section 1025 would require a report and assessment of potential costs and benefits of privatizing Department of Defense commissaries.</p>	

²¹ Department of Defense Office of the Under Secretary of Defense (Comptroller) Chief Financial Officer, Overview Fiscal Year 2016 Budget Request, February 2015, “Reduce Commissary Subsidy,” on PDF p. 65, at http://comptroller.defense.gov/Portals/45/documents/defbudget/fy2016/fy2016_Budget_Request_Overview_Book.pdf.

Discussion:

Section 641 of the House-passed version would ensure that there are no changes to the current secondary destination transportation policy that applies to fresh fruit and vegetables for commissaries in Asia and the Pacific until the Defense Commissary Agency (DeCA) conducts a comprehensive study on locating fresh supplies from local sources in the region such as in Japan, Guam, and South Korea. The recommendations from this study would be submitted to Congress with the intent of finding local cost-effective suppliers in the region that would lower transportation cost to DeCA without increasing prices to commissary patrons.

Section 642 of the House-passed version prohibits the Secretary of Defense from taking action to replace or consolidate the existing commissary system until a report on the defense commissary system is completed no later than September 1, 2015. A similar provision is included in Section 1025 of the Senate-passed version. The provision would require the Defense Secretary to submit a report by February 1, 2016 assessing the viability of privatizing the defense commissary system prior to the development of any plans or pilot program. Advocates for maintaining the current system oppose cuts to the commissary budget or consolidation with military exchanges due to potential cost increases that could negatively impact the military community, mostly retirees and active duty service members and their families, who live on or in close proximity to military installations. Some contend that the military community has carried the heavy burden of multiple deployments and separation and therefore, now is not the time to reduce these benefits. Some in favor of changing the current system reference the recommendation made in the January 2015 *Final Report of the Military Compensation and Retirement Modernization Commission* (MCRMC) to change the current commissary system by consolidating the commissary and exchanges systems into a single defense resale system (DeRA) and thereby streamlining products and services.²² Both Section 642 and Section 1025 would prohibit the replacement or consolidation of the current commissary system for FY2016 without prior study. Section 1025 contains language that would make Section 652 null and void. Section 652 of the Senate-passed version would direct the Secretary of Defense to submit a report no later than March 1, 2016, setting forth a plan to privatize the defense commissary system including a pilot program consisting of at least five of the largest commissary markets. The pilot program would also test the feasibility of groceries ordered online through the commissary system and their home delivery.

Section 651 of the Senate-passed version would amend 10 U.S.C. §2483 with respect to requirements regarding operating expenses and transportation costs for certain goods and supplies in commissary stores worldwide, by applying surcharges and attaining uniform system-wide pricing.

Section 653 of the Senate-passed version also would direct the Comptroller General to submit a report on the Commissary Surcharge, Non-appropriated Fund, and Privately-Financed Major Construction Program to the House and Senate Committees on Armed Services no later than 180 days after the date of the enactment. Elements of this report would include assessment of construction projects proposed; assessment of policies and procedures developed by the military departments to comply with DOD policies and directives; assessment of policies and procedures established by the Secretary of Defense to notify committees of Congress when such construction

²² Military Compensation and Retirement Modernization Commission (MCRMC), *Final Report*, January 29, 2015, (see PDF pp.161-170), at <http://www.mcrmc.gov/public/docs/report/MCRMC-FinalReport-29JAN15-HI.pdf>.

projects have commenced; and an assessment of construction projects completed before submitting to Congress. There is no similar provision in the House version.

References: CRS Report R43806, *Fact Sheet: Selected Highlights of H.R. 3979, the Carl Levin and Howard “Buck” McKeon National Defense Authorization Act for FY2015*, by Pat Towell.

Military Compensation and Retirement Modernization Commission (MCRMC), *Final Report*, January 29, 2015, at <http://www.mcrmc.gov/public/docs/report/MCRMC-FinalReport-29JAN15-HI.pdf>

CRS Point of Contact: Barbara Salazar Torreon, Analyst in Defense Budget and Military Manpower, x7-8996.

*TRICARE Beneficiary Cost-Sharing

Background: TRICARE is a health care program serving uniformed service members, retirees, their dependents, and survivors. In its FY2016 budget request, the Administration proposed to replace the TRICARE Prime, Standard, and Extra health plan options with a consolidated plan, to increase copays for pharmaceuticals, and to establish a new enrollment fee for future enrollees in the TRICARE-for-Life program (that acts like a Medigap supplement plan for Medicare-enrolled beneficiaries).

House-Passed H.R. 1735	Senate-Passed H.R. 1735	Final
No provision.	Sec. 702 would increase pharmacy copayments consistent with the Administration's proposal.	

Discussion: Except for pharmaceutical copays in the Senate-passed bill, none of the Administration's proposals were adopted. In addition, recommendations for changes to TRICARE were included in the final report of the Military Compensation and Retirement Compensation Modernization Commission. However, the President did not endorse those recommendations nor were they adopted in either the House- or Senate-passed bills. This is not to suggest that Congress will not consider major changes to the TRICARE benefit in the future: the Senate report stated

Although the committee believes that the Commission's healthcare recommendations may address lingering problems with-in the military health system, the committee feels it is prudent to take a very deliberate approach to enacting TRICARE reform legislation. The committee must better understand the implications and unintended consequences of any plan to transform a large, complex health program like TRICARE. The committee has recommended provisions in this Act, however, that would ensure the Department of Defense improves access to care, delivers better health outcomes, enhances the experience of care for beneficiaries, and controls health care costs. These provisions help lay the foundation for comprehensive TRICARE modernization and reform legislation in the near future.²³

The Senate pharmacy provision is discussed separately in the next section.

References: Previously discussed in CRS Report R43647, *FY2015 National Defense Authorization Act: Selected Military Personnel Issues*.

CRS Point of Contact: Don J. Jansen, x7-4769.

²³ S.Rept. 114-49, p. 161.

*TRICARE Pharmacy Copayments

Background: TRICARE beneficiaries have access to a pharmacy program that allows outpatient prescriptions to be filled through military pharmacies, TRICARE mail-order pharmacy, and TRICARE retail network and non-network pharmacies. Active duty service members have no pharmacy copayments when using military pharmacies, TRICARE Pharmacy Home Delivery, or TRICARE retail network pharmacies. Military pharmacies will provide free-of-charge a 90-day supply of formulary medications for prescriptions written by both civilian and military providers. Non-formulary medicines generally are not available at military pharmacies. It is DOD policy to use generic medications instead of brand-name medications whenever possible. The 2015 NDAA allowed a one-time \$3 increase to retail and mail order pharmacy copays and required refills for maintenance drug prescriptions (e.g., cholesterol, blood pressure) to be filled through lower cost mail order or military pharmacies. The Administration’s FY2016 budget request proposed a series of annual increases in the amount of copayments for fiscal years 2016 through 2025.²⁴

House-Passed H.R. 1735	Senate-Passed H.R. 1735	Final
No provision.	Section 702 would specify TRICARE pharmaceutical copays for fiscal years 2016 through 2025, similar to the Administration proposal.	

Discussion: Section 702 would increase the copayment for generic medications over the 2016-2025 period from \$8 to \$14 for a 30-day supply from a retail pharmacy and from \$0 to \$14 for a 90-day supply from the mail-order pharmacy. Copayments for brand-name drugs in the TRICARE formulary would gradually increase to \$46 by 2025 for both a 30-day supply from retail pharmacies and up to a 90-day supply from the mail-order pharmacy. Copayments for those medications are currently \$20 for drugs purchased through the retail network and \$16 for drugs purchased from the mail-order pharmacy. Copayments for non-formulary drugs would increase from \$46 to \$92 by 2025. Service members who are retired for medical reasons, spouses of members who die on active duty, and the family members of both of those groups, all would be exempt from any copay increases.

The Congressional Budget Office budget estimate for S. 1376 as reported by the SASC states:

DoD currently spends about \$4 billion each year on prescription drugs for TRICARE beneficiaries who are not eligible for Medicare. An increase in copayments would reduce DoD’s payments to pharmacies. In addition, CBO expects that higher copayments would lead some beneficiaries to reduce their use of medications, which, in some cases, would lead to more outpatient visits and hospitalizations. Based on information from DoD, CBO estimates that the net effect of implementing section 702 would be to reduce DoD’s discretionary health care costs by about \$900 million over the 2016-2020 period.

²⁴ Department of Defense Office of the Under Secretary of Defense (Comptroller) Chief Financial Officer, *Overview Fiscal Year 2016 Budget Request*, 2015, pp. 6-14, http://comptroller.defense.gov/Portals/45/documents/defbudget/fy2016/fy2016_Budget_Request_Overview_Book.pdf.

The cost estimate further states with respect to mandatory spending:

By modifying the pharmacy benefit, section 702 would reduce health care spending for TRICARE beneficiaries who are eligible for Medicare by \$3.8 billion over the 2016- 2025 period. Pharmacy spending for those beneficiaries is paid from the DoD Medicare-Eligible Retiree Health Care Fund, a mandatory account.²⁵

Reference(s): Previously discussed in CRS Report R43647, *FY2015 National Defense Authorization Act: Selected Military Personnel Issues*, and CRS Report R43184, *FY2014 National Defense Authorization Act: Selected Military Personnel Issues*.

CRS Point of Contact: Don Jansen, x7-4769.

²⁵ Congressional Budget Office, *Cost Estimate S. 1376*, June 3, 2015, pp. 22-23, 28-30, <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/s1376.pdf>.

Military Health System Quality Metrics

Background: The quality of health care provided through the military health system was the subject of a recent series of news articles.²⁶ Last year, then-Secretary of Defense Hagel ordered a 90-day review of the military health system which resulted in an action plan.²⁷ Some Members of Congress have expressed interest in the implementation of that follow-up plan.

House-Passed H.R. 1735	Senate-Passed H.R. 1735	Final
No provision.	<p>Section 711 would require the Secretary of Defense to ensure that TRICARE beneficiaries obtain health care appointments within access standards and wait-time goals. If the beneficiary is unable to obtain an appointment within the wait-time goals, the beneficiary would be offered an appointment with a contracted health care provider. It would also require the Secretary to publish health care access standards in the Federal Register and on a public Internet site.</p> <p>Section 731 would require the Secretary of Defense to enter into a memorandum of understanding with the Secretary of Health and Human Services to report, and make publicly available through the Hospital Compare website, information on quality of care and health outcomes regarding patients treated at military medical treatment facilities.</p> <p>Section 732 would require the Secretary of Defense to publish, and update at least quarterly, on a public website data on all measures used to assess patient safety, quality of care, patient satisfaction, and health outcomes for health care provided at each medical treatment facility.</p> <p>Section 733 would require an annual report on patient safety, quality of care, and access to care at military medical treatment facilities.</p> <p>Section 374 would require the Secretary of Defense to submit to the armed services committees a report setting forth current and</p>	

²⁶See *New York Times* series on “Military Medicine” at <http://www.nytimes.com/2015/04/20/us/service-members-are-left-in-dark-on-health-errors.html>.

²⁷ http://www.defense.gov/home/features/2014/0614_healthreview/.

House-Passed H.R. 1735	Senate-Passed H.R. 1735	Final
	future plans to improve the experience of beneficiaries with health care and to eliminate performance variability.	

Discussion:

Sections 711 and 731 to 735 of the Senate-passed bill require a variety of actions to increase the visibility of various health quality metrics by public access and through reports to Congress. CBO estimates that about \$95 million would be required over the 2016-2020 period to satisfy these requirements.²⁸

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²⁸ Congressional Budget Office, Cost Estimate S. 1376, June 3, 2015, p.23, <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/s1376.pdf>.

Contraception

Background: The 2014 annual report of the Defense Advisory Committee on Women in the Service reported that access to contraception remains a concern, stating that “recent studies have indicated continuing challenges with Service members’ access to reproductive health care.”²⁹ TRICARE covers the following forms of birth control when prescribed by a TRICARE-authorized provider:

- Contraceptive diaphragm, including measurement, purchase and replacement,
- Intrauterine devices, including surgical insertion, removal and replacement,
- Prescription contraceptives, including the Preven Emergency Contraceptive Kit containing special doses of regular birth control pills and a self-administered pregnancy test, and
- Surgical sterilization, male and female.

TRICARE doesn't cover condoms and nonprescription spermicidal foams, jellies or sprays.

House-Passed H.R. 1735	Senate-Passed H.R. 1735	Final
<p>Section 702 would require the Secretary of Defense to ensure that every military medical treatment facility has a sufficient stock of a broad range of methods of contraception approved by the Food and Drug Administration to be able to dispense any such method of contraception to women members of the Armed Forces and female covered beneficiaries.</p> <p>Section 703 would require the Secretary of Defense to ensure that, whenever possible, a female member of the Armed Forces who uses prescription contraception on a long-term basis should be given prior to deployment a sufficient supply of the prescription contraceptive for the duration of the deployment.</p>	<p>Section 714 would require the Department of Defense to provide, through clinical practice guidelines, current and evidence-based standards of care regarding contraception methods and counseling to all health care providers employed by the Department and to ensure service women have access to comprehensive contraception counseling prior to deployment and throughout their military careers. It would also require the Secretary to establish a uniform, standard curriculum to be used in family planning education programs for all service members.</p>	

Discussion: Both House and Senate-passed bills include provisions that would require DOD to take actions to increase access to contraception.

CRS Point of Contact: Don J. Jansen, x7-4769.

²⁹ Defense Advisory Committee on Women in the Service, *2014 Report*, 2014, p. 19, http://dacowits.defense.gov/Portals/48/Documents/Reports/2014/Annual%20Report/2014%20DACOWITS%20Annual%20Report_Final.pdf.

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