FY2012 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. Recent military operations in Iraq and ongoing operations in Afghanistan, along with the 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 and Senate versions of the National Defense Authorization Act for FY2012. This report provides a brief synopsis of sections that pertain to personnel policy. These include end strengths, pay raises, health care issues, and language affecting the repeal of the "Don't Ask, Don't Tell" policy, as well as congressional concerns over the handling of sexual assaults in the military.

The House version of the National Defense Authorization Act for Fiscal Year 2012, H.R. 1540, was introduced in the House on April 14, 2011; reported by the House Committee on Armed Services on May 17, 2011 (H.Rept. 112-78); and passed on May 26, 2011.

Various Senate versions were introduced. S. 1867 was introduced on November 15, 2011, and passed by the Senate on December 1, 2011. Often the Senate will add language not included in the House version, add language that affects an issue in a differing manner (for example, the Senate may have end strengths numbers that differ from the House). Usually, these differences will be worked out under the Conference Committee's consideration of the legislation. The Conference Committee language was incorporated into the report.

On December 14, 2011, the House passed the conference reported version of H.R. 1540. The next day, the Senate passed H.R. 1540. On December 31, 2011, President Obama signed P.L. 112-81 into law.

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.

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

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Introduction

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 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 statuses in the FY2012 House and Senate versions of the NDAA.

The House version of the National Defense Authorization Act for Fiscal Year 2012, H.R. 1540, was introduced in the House on April 14, 2011; reported by the House Committee on Armed Services on May 17, 2011 (H.Rept. 112-78); and passed by the House on May 26, 2011. The Senate version of the NDAA, S. 1867, was passed on December 1, 2011. On December 14, 2011, the House passed the conference reported version of H.R. 1540. On December 15, 2011, the Senate passed H.R. 1540, and President Obama signed P.L. 112-81 into law on December 31, 2011.[1]

The entries under the headings "House," "Senate," and "P.L. 112-81" 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 FY2011 National Defense Authorization Act and discussed in CRS Report R41316, *FY2011 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by Charles A. Henning. Those issues that were considered previously are designated with a "*" in the relevant section titles of this report.

Topics have been arranged in the order in which they were reported in the House report.

[1] 125 Stat. 1298.

Adoption of Military Working Dogs

Background: In 2000, Congress passed P.L. 106-446 entitled "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."

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 351 amends Title 10 U.S.C., Section 2583(c), created by P.L. 106-446), to expand those authorized to adopt military working dogs to include the family of a deceased or seriously wounded member of the Armed Forces who was the handler of the dog.	No similar provision.	Section 351 allows for the adoption of these dogs only by the handler (if wounded), or by the parent, spouse, child or sibling of the handler in cases where the handler is deceased,

Discussion: Military working dogs are trained to be fearless and aggressive. These traits may or may not be desired outside of the military or law enforcement environments. In passing P.L. 106-446, Congress included language that limited liability of claims arising out of such a transfer including, injury, property damage, additional training, etc. There are public concerns for the welfare of these dogs. There are also concerns for any family member of deceased or seriously wounded members of the Armed Forces who care for these dogs, but who were not responsible for their original training and handling. A recent article noted that a small percent of the dogs deployed suffer from 'canine PTSD' which can lead to 'troubling behavior.'[2]

CRS Point of Contact: David F. Burrelli, x7-8033.

[2] "Some [dogs] undergo sharp changes in temperament, becoming unusually aggressive with their handlers or clingy and timid." Dao, James, After Duty, Dogs Suffer Like Soldiers, *New York Times*, December 2, 2011.

*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 FY2009, 2010 and 2011, the Army was authorized additional, but smaller increases to an FY2011 end strength of 569,400. 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 stations. But with withdraw of U.S. forces from Iraq in December 2012 and plans to begin withdrawing U.S. forces from Afghanistan in July, 2012, the Secretary of Defense announced on January 6, 2011 that the Active Army would begin a reduction in its end strength by 22,000 in 2012. This reduction would be followed by an additional reduction of 27,000 to begin in FY2015 and be completed in FY2016.

House (P.L. 104-199)	Senate (S. 1867)	P.L. 112-81
Section 401 authorizes a total FY2012 active duty end strength of 1,422,639 including:	Section 401 authorizes a total active duty end strength of 1,422,600 including:	Section 401 adopted the end strengths recommended by the Senate as of September, 30, 2012:
562,000 for the Army	562,000 for the Army	562,000 for the Army
325,739 for the Navy	325,700 for the Navy	325,700 for the Navy
202,100 for the Marine Corps	202,100 for the Marine Corps	202,100 for the Marine Corps
332,800 for the Air Force	332,800 for the Air Force	332,800 for the Air Force

Discussion: FY2012 represents the first year of the Army drawdown with a reduction of 7,400 in FY2012. There are less dramatic reductions slated for the Navy (-2,961) and a slight increase for the Air Force (+600) (see table below). The House Armed Services Committee (HASC) however, expressed concern with these reductions in light of the existing 20,000 nondeployable personnel currently in the Army (17% of the Active Component) and the 9,000 soldiers who remain in the disability processing system for up to a year. The committee also expressed concern about reducing end strength when only marginal improvement has been realized in dwell time and uncertainty remains over the withdrawal from Afghanistan.

The Senate generally supported the House's strength recommendations but did recommend a further reduction of 39 for the Navy. The Senate's recommended strength levels were supported by the Conference Committee.

Table 1. Authorized Active Duty End Strengths

	2009 (P.L. 110-417)	2010 (P.L. 111-84)	2011 (P.L. 111-383)	2012
Baseline Army	532,400	562,400	569,400	562,000 (-7,400)
Baseline Navy	326,323	328,800	328,700	325,739 (-2,961)
Baseline Marine Corps	194,000	202,100	202,100	202,100 (no change)
Baseline Air Force	317,050	331,700	332,200	332,800 (+600)
Baseline Subtotal	1,369,773	1,425,000	1,432,400	1,422,639

	2009 (P.L. 110-417)	2010 (P.L. 111-84)	2011 (P.L. 111-383)	2012
Temporary Army	22,000[a]	22,000[a]	n/a	
Temp. Marine Corps	13,000[a]	0	n/a	
Temporary Subtotal	35,000	22,000	n/a	
Total Authorized	1,404,773	1,477,000	1,432,400	

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

The Congressional Budget Office (CBO) estimates that the House-proposed decrease of 9,800 military personnel will save $5.8 billion over the 2012 to 2016 period. This savings results from reductions in pay and benefits for fewer personnel and operation and maintenance costs.[3]

Reference(s): Previously discussed in CRS Report R41316, *FY2011 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by Charles A. Henning, and CRS Report R40711, *FY2010 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by Don J. Jansen. See also CRS Report RL32965, *Recruiting and Retention: An Overview of FY2009 and FY2010 Results for Active and Reserve Component Enlisted Personnel*, by Lawrence Kapp.

CRS Point of Contact: Charles Henning, x7-8866.

[3] Congressional Budget Office Cost Estimate, H.R. 1540: National Defense Authorization Act for Fiscal Year 2012, May 20, 2011, available at http://www.cbo.gov/ftpdocs/122xx/doc12202/hr1540.pdf.

*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 2% over the past ten years (874,664 in FY2001 versus 856,200 in FY2011). 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), and Coast Guard Reserve (8,000).[4] Between FY2001 and FY2011, 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 (-3,158 or -4%), 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 largely unchanged during this period.

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 411 authorizes the following end strengths for the Selected Reserves: Army National Guard: 358,200 Army Reserve: 205,000 Navy Reserve: 66,200 Marine Corps Reserve: 39,600 Air National Guard: 106,700 Air Force Reserve: 71,400 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 FY2012 are the same as those for FY2011 with the exception of the Air Force Reserve and the Navy Reserve. The Air Force Reserve's authorized end strength for FY2011 was 71,200, but the administration requested an increase to 71,400 (+200). The Navy Reserve's authorized end strength for FY2011 was 65,500, but the administration requested an increase to 66,200 (+700). The final bill approved the administration's requested increases.

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

[4] P.L. 106-398, Section 411.

New Reserve Activation Authorities

Background: At present, there are three major statutory provisions by which reservists can be involuntarily ordered to active duty by the federal government for an extended period of time.[5] Depending on which of these provisions is used, a reserve activation is commonly referred to as either a Presidential Reserve Call-up (PRC), a Partial Mobilization, or a Full Mobilization. They are authorized by law in 10 USC 12304, 12302, and 12301(a), respectively. These provisions differ from each other in terms of the statutory requirements for utilization, the number and type of reservists called up, and the duration of the call up.[6] There has been debate in recent years about modifying these authorities to allow for broader use of the reserve components, particularly to enhance federal capabilities for disaster response.

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
No similar provisions.	Section 515 adds a new provision to Title 10 allowing the Secretary of Defense to involuntarily activate members of the federal reserve components (not the National Guard) for up to 120 days when a governor requests federal assistance in responding to a major disaster or emergency. Section 515 also contains language specifying that when the armed forces and the National Guard are employed simultaneously in support of civil authorities, the "usual and customary arrangement" should include the appointment of a dual status commander. It also states that when a major disaster or emergency occurs, the governor of the affected state should be the principal civil authority supported by the primary federal agency, while the state Adjutant General or his or her designee should be the principal military authority supported by the dual status commander.	Section 515 incorporates the language of the Senate bill's Section 515.
	Section 511 adds a new provision to Title 10 allowing the Secretaries of the military departments to involuntarily activate up to 60,000 reservists, from either the Selected Reserves of the Individual Ready	Section 516 largely adopts the language of the Senate bill's Section 511, but clarifies that the "preplanned mission" must be in support of a combatant command. and limits the activation authority to

[5] There are also provisions for the recall of retired reservists, activation of the National Guard for domestic purposes, and ordering reservists to duty for annual training of up to 15 days per year.

[6] For more information on this topic, see CRS Report RL30802, *Reserve Component Personnel Issues: Questions and Answers*, by Lawrence Kapp.

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
	Reserve mobilization category, for up to 365 consecutive days for "a preplanned mission."	Selected Reserve units.

Discussion:

The Senate bill contained two new provisions for activating units and individuals in the Reserve Components. Section 515 in the Senate bill would allow the Secretary of Defense to involuntarily order units and individuals of the Army Reserve, Navy Reserve, Marine Corps Reserve, and Air Force Reserve to active duty for up to 120 days "when a governor requests federal assistance in responding to a major disaster or emergency." National Guard forces are not included in this authority, but state governors already have the ability to activate their state National Guard forces and to request support from other state National Guards under the Emergency Management Assistance Compact. The Coast Guard Reserve already has a short-term, disaster response activation authority (14 USC 712). There was no analogous provision in the House bill. Section 515 of the final bill adopted the Senate's language.

Section 515 of the Senate bill also contained language specifying that when the armed forces and the National Guard are employed simultaneously in support of civil authorities within the United States, a dual status commander should be appointed. A dual status commander is a military officer who simultaneously serves as a state National Guard officer under the control of his or her governor, and as a federal military officer under the control of the President.[7] A dual status commander is thus able to command non-federalized National Guard forces and federal forces via these separate chains of command. The language of this provision also specifies that "when a major disaster or emergency occurs in any area subject to the laws of any State, Territory, or the District of Columbia, the Governor of the State affected normally should be the principal authority supported by the primary Federal agency and its supporting Federal entities, and the Adjutant General of the State or his or her subordinate designee normally should be the principal military authority supported by the dual-status commander when acting in his or her State capacity." There was no analogous language in the House bill. Section 515 of the final bill adopted the Senate's language.

A separate provision of the Senate bill (Section 511) would add a new authority to involuntarily activate individuals and units of the Selected Reserve, and members of the Individual Ready Reserve's "mobilization category,"[8] for up to 365 consecutive days of active duty. The authority to activate reservists under this provision rests with the Service Secretary, but it may only be invoked for missions that are "preplanned" and where the reserve component activations were budgeted for. According to the Senate Committee report, this new authority "is not designed for use for emergent operational or humanitarian missions, but rather to enhance the use of reserve component units that organize, train, and plan to support operational mission requirements to the same standards as active component units under service force generation plans in a cyclic, periodic, and predictable manner" No more than 60,000 members of the National Guard and

[7] See 32 U.S.C. 315 and 325.

[8] 10 USC 10144(b) specifies that individuals may not be placed in the Individual Ready Reserve mobilization category unless "(A) the member volunteers for that category; and (B) the member is selected for that category by the Secretary concerned, based upon the needs of the service and the grade and military skills of that member." DOD has not made it a priority to fill this "mobilization category" and currently there are no members assigned to it.

Reserves may be serving on active duty under this authority at any given time. There was no analogous provision in the House bill. Section 516 of the final bill largely adopts the Senate language, but clarifies that the "preplanned mission" must be in support of a combatant command, and that only units of the Selected Reserve may be activated.

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

General Officer/Flag Officer Reform

Background: 10 U.S.C. Section 525 establishes the criteria for the number of general/flag officer[9] authorizations and provides the formula for determining the appropriate grade distribution of these positions. As of July 2010, there were 967 actual general/flag officers on active duty but general/flag officer authorizations allow for up to 982 positions. Of these 982 positions, 658 are slated to fill in-service requirements while an additional 324 fill joint duty assignments.

In March, 2011, Secretary of Defense Gates released a 48-page memo that announced a number of efficiency initiatives designed to save $178 billion over the 2012 to 2016 period. One of the initiatives would eliminate 101 general/flag officer positions from the FY2010 baseline and downgrade an additional 22 positions by filling them at a lower grade.[10] These positions would be eliminated and downgraded over the next two years as U.S. forces in Iraq and Afghanistan are withdrawn.

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 502 would eliminate 14 general/flag officers in joint duty assignments and add up to 7 officers serving in intelligence positions to count against the joint duty assignment limit. It would also eliminate 11 Air Force general officer authorizations and require that service academy superintendents count against their service limits. These changes must occur between January 1, 2012 and October 1, 2013.	No similar provision.	Section 502 increased the number of active duty general officers by 1 each for the Army, Navy and Marine Corps while reducing the Air Force by 10. It also reduced the number of joint duty general officer authorizations from 324 to 310. In addition, the Chief of the National Guard Bureau and the service academy superintendents are no longer excluded from general officer limitations effective January 1, 2012.

Discussion: Congress is sensitive to the general/flag officer content of the services, especially when compared to service end strength. These general/flag officer to other service member ratios have worsened since 9/11 and today the Air Force, for example, has one general for every 1,045 airmen as compared to the Army which has one general for every 1,764 soldiers. The changes noted in Section 502 are in addition to the eliminations and downgrades identified by Secretary Gates.

CRS Point of Contact: Charles A. Henning, x7-8866.

[9] There are four ranks at the general/flag officer level. From senior to junior, these include (1) General in the Army, Air Force and Marine Corps; Admiral in the Navy; (2) Lieutenant General in the Army, Air Force and Marine Corps; Vice Admiral in the Navy; (3) Major General in the Army, Air Force and Marine Corps; Rear Admiral, Upper Half in the Navy; (4) Brigadier General in the Army, Air Force and Marine Corps; Rear Admiral, Lower Half in the Navy.

[10] Department of Defense, "Department of Defense Efficiency Initiatives: Fiscal Year 2012 Budget Estimate, Office of the Under Secretary of Defense (Comptroller), Undated.

Vice Chief of the National Guard Bureau

Background: In 1994, Congress established the position of Vice Chief of the National Guard Bureau (VCNGB), with the grade of major general (two-star general).[11] Ten years later, it was redesignated as the Director of the National Guard Bureau Joint Staff to reflect the duties of the position in light of the Bureau's reorganization, which included a joint staff.[12] Section 904 of S. 1390, the Senate-passed version of the FY2010 National Defense Authorization Act, contained a provision to re-establish the position of VCNBG, with a grade to be determined by the Secretary of Defense. This provision was not included in the final bill, but a separate provision did require DOD to provide an assessment of the necessity of reestablishing the position of VCNGB.[13] DOD has not yet submitted this report.

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 511 would establish the position of Vice Chief of the National Guard Bureau, with the rank of lieutenant general. To be selected for this position, an Army National Guard or Air National Guard officer would need to meet the following qualifications: • Be nominated by his or her governor; • Have at least 10 years of federally recognized commissioned service in the National Guard; • Currently serving in the grade of brigadier general or higher • Be recommended by the Secretary of the Army or Air Force, and by the Secretary of Defense; • Be certified by the Chairman of the Joint Chiefs of Staff as having significant joint duty experience;	Section 1602 would establish the position of Vice Chief of the National Guard Bureau with the rank of lieutenant general. To be selected for this position, an Army National Guard or Air National Guard officer would need to meet the following qualifications: • Be recommended by his or her governor; • Have at least 10 years of federally recognized commissioned service in the National Guard; • Currently serving in the grade of brigadier general or higher	Section 511 incorporates the language of the House's Section 511.
Under Section 511, the VCNGB would be appointed by the President, with the advice and consent of the Senate.	Under Section 1602, the VCNGB would be selected by the Secretary of Defense.	
Section 511 provides that the Vice Chief will serve as the Acting Chief	Section 1602 provides that the Vice Chief will serve as the Acting Chief of the National Guard Bureau in the	

[11] P.L. 103-337, Section 904(a).

[12] P.L. 108-375, Section 508.

[13] FY2010 NDAA, Section 502(a)(4)(A).

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
of the National Guard Bureau in the event that the Chief of the National Guard Bureau is absent or disabled, or the position is vacant. It would also specify a chain of succession in the event that the Vice Chief is absent or disabled, or the position is vacant. The current Director of the Joint Staff would hold the position of acting Vice Chief until a permanent appointment can be made.	event that the Chief of the National Guard Bureau is absent or disabled, or the position is vacant.	

Discussion: In the FY2008 National Defense Authorization Act (P.L. 110-181, Title XVIII), Congress elevated the grade of the Chief of the National Guard Bureau (CNBG) from lieutenant general (3-star general) to general (4-star general) and added new responsibilities to the position. Supporters of re-establishing the VCNGB position argue that the CNGB needs someone to assist him in carrying out his duties, just as the Service Chiefs and the Chairman of the Joint Chiefs of Staff each have Vice Chiefs to assist them. They also note that a Vice Chief should be at least the same rank as the Directors of the Army National Guard and the Air National Guard, both of whom are lieutenant generals, in order to effectively act in the place of the CNGB when required. Some may consider the redesignation and increase in grade as unnecessary, particularly in a time when general officer positions are being eliminated or downgraded within the Department of Defense.

Both the House bill and Senate bill would reestablish the VCNGB position with the grade of lieutenant general. However, the House provision contained criteria for selection to the position which were not in the Senate bill. It also made the position a presidentially appointed position, subject to Senate confirmation, while the Senate provision specified that the Secretary of Defense would appoint the VCNGB. Section 511 of the final bill adopted the House language.

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

Pre-separation Counseling for Members of the Reserve Components

Background: 10 U.S.C. 1142 requires the Service Secretaries to provide pre-separation counseling to members of the Armed Forces whose discharge or release from active duty is anticipated as of a specific date.[14] The counseling must include discussions of a number of topics, including educational benefits, relocation assistance services, post-separation medical and dental coverage, career counseling, financial planning, employment and re-employment rights, and veterans' benefits. The counseling may begin as far out as 24 months before retirement and 12 months before separation, but generally must begin no later than 90 days prior to the date of discharge or release. This time frame can be difficult to meet for reserve component members serving on operational deployments (for example, in Iraq and Afghanistan), as it is often not feasible to provide counseling services while they are performing operational duties, and they are typically released from active duty within a few weeks of return to the United States. The Department of Defense requested an amendment to 10 U.S.C. 1142 "[i]n order to bring the reserve components into compliance with the statute."

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 512 would amend 10 U.S.C. 1142 to eliminate the 90 day requirement for reserve component personnel serving more than 30 days on active duty when the Service Secretary determines that operational requirements make the 90-day requirement unfeasible. In such cases, the pre-separation counseling will begin as soon as possible.	Using slightly different language, Section 513 of the Senate bill would make a similar change to 10 USC 1142, eliminating the 90 day requirement for reserve component personnel when the Service Secretary determines that operational requirements make the 90-day requirement unfeasible. In such cases, the pre-separation counseling shall begin as soon as possible.	Section 513 incorporates the Senate language.

Discussion: The House and Senate provisions are aimed at adapting the pre-separation counseling requirement to the reserve deployment cycle. The final bill adopted the Senate language, which means that pre-separation counseling will be conducted for members of the National Guard and Reserve serving on active duty for a period of more than 180 days, but the counseling may occur less than 90 days prior to the date of separation.

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

[14] Counseling is not provided to a member who is being discharged or released before the completion of that member's first 180 days of active duty, unless the member is being retired or separated for disability.

Chief of the National Guard Bureau a Member of the Joint Chiefs of Staff

Background: The Joint Chiefs of Staff is made up of a Chairman, a Vice-Chairman, the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps. The Chairman is "the principal military adviser to the President, the National Security Council, the Homeland Security Council, and the Secretary of Defense." The other members of the JCS "are military advisers to the President, the National Security Council, the Homeland Security Council, and the Secretary of Defense" but normally provide their advice through the Chairman.[15]

At present, the Army National Guard and the Air National Guard are represented on the Joint Chiefs of Staff (JCS) by their service chiefs—the Chief of Staff of the Army and the Chief of Staff of the Air Force, respectively—in the same way that the Army Reserve and Air Force Reserve are represented. Some have argued that this representation is inadequate, particularly when it comes to issues related to the use of the National Guard in a non-federalized status for domestic operations (for example, responding to disasters), and note that the National Guard has often been excluded from participating in key decision-making processes. They have advocated making the Chief of the National Guard Bureau (CNGB) a member of the JCS in order to ensure that the National Guard has a "seat at the table" when high-level policy options are debated and recommendations for the President and Secretary of Defense are formulated.

This issue was debated before the Commission on the National Guard and Reserve (CNGR) in 2006-2007, which recommended against such a change "on the grounds that the duties of the members of the Joint Chiefs of Staff are greater than those of the Chief of the National Guard Bureau." The Commission report further noted that making the CNGB a member of the JCS:

> would run counter to intra- and inter-service integration and would reverse progress toward jointness and interoperability: making the Chief of the National Guard Bureau a member of the Joint Chiefs of Staff would be fundamentally inconsistent with the status of the Army and Air National Guard as reserve components of the Army and Air Force. Finally, the Commission concludes that this proposal would be counter to the carefully crafted organizational and advisory principles established in the Goldwater-Nichols legislation.

Shortly after the Commission report was published, Congress made a number of changes related to the National Guard Bureau and the CNGB. Although Congress declined to make the CNGB a member of the JCS at that time, it did elevate the grade of the position from lieutenant general (three-star general) to general (four-star general) and added new responsibilities to the position. Congress also specified that—in addition to the Chief of the National Guard Bureau's existing duties as principal advisor to the Secretaries and Chiefs of Staff of the Army and Air Force on National Guard matters—the Chief was also "a principal adviser to the Secretary of Defense, through the Chairman of the Joint Chiefs of Staff, on matters involving non-federalized National Guard forces and on other matters as determined by the Secretary of Defense." [16]

[15] 10 U.S.C. 151(b-f)

[16] FY2008 National Defense Authorization Act (P.L. 110-181, Section 1811(d))

On November 10, 2011, the Senate Armed Services Committee received testimony from the DOD General Counsel, the six current members of the Joint Chiefs of Staff, and the Chief of the National Guard Bureau on whether the Chief should be made a member of the JCS. The current members of the Joint Chiefs of Staff and the DOD General Counsel were opposed to making this change, while the Chief of the National Guard Bureau, General Craig McKinley, favored it. In his testimony, General McKinley argued that "only full Joint Chiefs of Staff membership for the Chief of the National Guard Bureau will ensure that the responsibilities and capabilities of the non-Federalized National Guard are considered in a planned and deliberate manner that is not based upon ad hoc or personal relationships but is, instead, firmly rooted in the law and the National strategy."[17]

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 515 designates the CNGB as a "member of the Joint Chiefs of Staff (as described in Section 151 of [Title 10])"	Section 1603 designates the CNGB as a member of the JCS and specifies that "the Chief of the National Guard Bureau shall perform the duties prescribed for him or her as a member of the Joint Chiefs of Staff under Section 151 of [Title 10]."	Section 512 designates the Chief of the National Guard Bureau as a member of the Joint Chiefs of Staff and specifies that "[a]s a member of the Joint Chiefs of Staff, the Chief of the National Guard Bureau has the specific responsibility of addressing matters involving non-Federalized National Guard forces in support of homeland defense and civil support missions."
Section 515 also specifies that in this role, the CNGB shall advocate for the state and territorial National Guards and "coordinat[e] the efforts of the war fighting support and force provider mission of the National Guard with the homeland defense, defense support to civil authorities, and State emergency response missions of the National Guard to ensure the National Guard has the resources to perform its multiple missions."	No similar provision.	
Additionally, Section 515 designates the CNGB as an "advocate and liaison" for state and territorial National Guards and requires the CNGB to consult with governors and adjutant generals before any changes are made to National Guard force structure or equipment levels.	No similar provision.	

Discussion: Both the House and Senate bill would make the CNGB a member of the JCS. The House bill would make other changes as well. It would formally assign the CNGB with responsibility for being an advocate and liaison for the National Guards of the states and territories, informing them of all actions that could affect their federal or state mission, consulting with governors and adjutant generals before changes in force structure or equipment levels are made, and ensuring that the National Guard has the resources to perform both its war fighting and domestic response missions. Section 512 of the final bill designates the Chief of the National Guard Bureau as a member of the Joint Chiefs of Staff and specifies that "[a]s a member of the Joint Chiefs of Staff, the Chief of the National Guard Bureau has the specific responsibility of

[17] Testimony of General Craig R. McKinley before the Senate Armed Services Committee, November 10, 2011, available at http://armed-services.senate.gov/Transcripts/2011/11%20November/11-73%20-%2011-10-11.pdf, p. 16.

addressing matters involving non-Federalized National Guard forces in support of homeland defense and civil support missions."

Reference(s): Testimony before the Senate Armed Services Committee by Jeh Johnson, General Martin Dempsey, Admiral James Winnefield, General Ray Odierno, Admiral Jonathan Greenert, General James Amos, General Norton Schwartz, and General Craig McKinley, available at http://armed-services.senate.gov/Transcripts/2011/11%20November/11-73%20-%2011-10-11.pdf

Testimony before the Commission on the National Guard and Reserve by General Steven Blum, Dr. David Chu, Major General Frank Vavala, and General Peter Pace, available at http://www.cngr.gov/.

Second Report of the Commission on the National Guard and Reserves: 75-76, http://www.cngr.gov/pdf/CNGR%20Second%20Report%20to%20Congress%20.pdf.

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

*Cold War Victory Medal

Background: Congress authorized the Cold War Recognition Certificate years ago as part of the FY1998 National Defense Authorization Act (section 1084). Its was created to recognize the contributions and sacrifices of our armed forces and government civilians whose service contributed to victory in the Cold War. Members of the armed forces and federal government civilian employees who served the United States during the Cold War period, from September 2, 1945, to December 26, 1991, are eligible.

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
No similar provision.	Under the language in Section 581, the Secretary of Defense may authorize the issuance by the Secretaries concerned of a medal, to be known as the 'Cold War Medal,' subject to regulations prescribed by the Secretary of Defense.	This provision was not included.

Discussion: A number of veterans' organization have supported efforts to create this medal in recognition of the veterans' role in the Cold War.

CRS Point of Contact: David F. Burrelli, x7-8033.

Policy on Military Recruitment and Enlistment of Graduates of Secondary Schools

Background: Prior to 1987, the Services had differing policies with regard to how they treated secondary educational credentials in the recruiting process. Following empirical analysis, three tiers were created that corresponded with the likelihood that a recruit would successfully complete his/her first term. Those most likely to finish their first term are in tier one and include recruits with a traditional high school diploma and/or at least one year of college. Those with alternative diplomas, such as the GED, Adult Education diplomas, Home Study certificates, Correspondence School Graduates, for example, are in tier two. Those with no credentials (e.g., high school dropouts), or with credentials that do not satisfy falling into the first two tiers were given the lowest priority. Although this approach appears to be working, it has been over 20 years since the data have been reviewed. During that time, other forms of alternative education have emerged, including on-line programs.

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 525 would require recruiters to treat persons receiving diplomas from legally operating secondary schools in a state the same as those receiving diplomas from secondary schools as defined in U.S. Code. The Secretary is directed to prescribe a recruiting and enlistment policy that includes: "(1) Means of identifying qualified persons to enlist; (2) Means for assessing how qualified persons fulfill their enlistment obligation; and (3) Means for maintaining data by each diploma source which can be used to analyze attrition rates."	Section 526 contains a similar provision as in the House version.	Section 532 requires recruiters to treat persons receiving diplomas from legally operating secondary schools in a state, or those who otherwise complete a program of secondary education in compliance with State law, the same as those receiving diplomas from secondary schools as defined in U.S. Code. The Secretary is directed to prescribe a recruiting and enlistment policy that includes: "(1) Means of identifying qualified persons to enlist; (2) Means for assessing how qualified persons fulfill their enlistment obligation; and (3) Means for maintaining data by each diploma source which can be used to analyze attrition rates."

Discussion: The House is concerned that since DOD developed its policy on secondary education, other alternative means of obtaining a diploma have emerged such as on-line educational programs (i.e., non-"brick and mortar" programs). DOD originally created this policy based on attrition data. This approach seems to suggest making the changes and then studying the data.

Reference(s): CRS Report 88-474 F, *Military Recruiting: Controversy over the Use of Educational Credentials*, by David F. Burrelli (out of print; available upon request).

CRS Point of Contact: David F. Burrelli, x7-8033.

Additional Condition on Repeal of Don't Ask, Don't Tell Policy

Background: P.L. 111-321 called for the repeal of Title 10 U.S.C., Section 654, which served as the basis for the 1993 policy banning open homosexuality in the military, colloquially known as Don't Ask, Don't Tell or DADT. Before the law and policy were repealed, a number of steps were taken, including (1) certification by the President, Secretary of Defense and Chairman of the Joint Chiefs of Staff that the repeal was consistent with military readiness, military effectiveness, unit cohesion and recruiting; (2) certification that DOD prepared the necessary policies and regulations for implementing the repeal; and (3) a subsequent 60-day waiting period before repeal would occur. Until these steps are satisfied, the law prohibiting open homosexuality in the military remains in effect. On September 20, 2011, Section 654 was repealed.

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 533 modifies the certification process to require the additional certifications of the Chief of Staff of the Army, the Chief of Naval Operations, Commandant of the Marine Corps, and the Chief of Staff of the Air Force.	No similar provision.	This provision was not included.

Discussion: During the process of considering legislation to repeal Don't Ask, Don't Tell, certain amendments, including the language in sec 533, were procedurally blocked. As structured, the repeal required only the certification from those who had previously stated support for repeal of DADT in the military. Although other members of the Joint Chiefs of Staff had stated they could carry out the repeal, certain members of the Joint Chiefs of Staff expressed reservations regarding the repeal. Given that the repeal has already occurred, it is not clear what effect enacting this language would have had.

Reference(s): CRS Report R40782, *"Don't Ask, Don't Tell": Military Policy and the Law on Same-Sex Behavior*, by David F. Burrelli, and CRS Report R42003, *The Repeal of "Don't Ask, Don't Tell": Issues for Congress*, by David F. Burrelli.

CRS Point of Contact: David F. Burrelli, x7-8033.

Reform of Offenses Relating to Rape, Sexual Assault, Other Sexual Misconduct, and Sodomy under the Uniform Code of Military Justice

Background Concerns over laws regarding rape and sexual misconduct, as well as the repeal of the Don't Ask Don't Tell policy led to a review of the Uniform Code of Military Justice. The Joint Service Committee of Military Justice recommended numerous changes to the Uniform Code of Military Justice concerning rape and sexual assault. These changes were submitted to the House and Senate Armed Services Committees for consideration. Included in these recommendations was language that would repeal the prohibition on sodomy.[18]

House (H.R. 1540**)**	**Senate (**S. 1867**)**	**P.L. 112-81**
No similar provision.	In addition to striking Article 125 from the UCMJ, Section 551 removes the word 'sodomy' from Articles 43, Statute of limitations, and 118, Murder. This Section also reorganizes Article 120, Rape, sexual assault, and other sexual misconduct, and 120a, Stalking, into three categories based on modified or existing language in the original articles: 120, Rape and sexual assault generally, 120a, Stalking, 120b Rape and sexual assault of a child, and 120c, Other sexual misconduct.	Section 541 is adopted making changes to Article 120 without the repeal of Article 125.

Discussion: In addition to reorganizing and modifying existing language pertaining to rape and sexual assault, including rape and sexual assault of children, this section creates language regarding non-consensual sexual misconduct (indecent viewing, visual recording or broadcasting). These changes align the language in Article 120 with definitions in other Articles of the UCMJ ('rape by unlawful force'), clarifies sexual assault ('removing the focus from the degree of incapacity of the victim and refocuses on the accused's actions'), and simplifies existing language with regard to the rape of children, according to the Joint Service Committee. Despite these and previous changes, including changes in prosecution and victim advocacy, problems remain.[19] This language removes sodomy as a chargeable offense. Although the removal of sodomy has been justified based on certain court decisions striking down sodomy laws (*Lawrence v. Texas*[20], for example), some have noted that the Comprehensive Review

[18] Uniform Code of Military Justice, Article 125. Sodomy "Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy."

[19] "Contrary to public and political impressions, an extensive McClatchy review of military sexual assault finds plenty of Pentagon and congressional action. Some works. Some falls short. Some goes too far, in a legal arena that's notorious for its complications." Doyle, Michael, and Marisa Taylor, *McClatchy Newspapers*, November 28, 2011.

[20] 539 U.S. 558 (2003).

Working Group recommended that it be removed as part of the effort to repeal the Don't Ask, Don't Tell policy.[21]

Reference(s): CRS Report R40782, *"Don't Ask, Don't Tell": Military Policy and the Law on Same-Sex Behavior*, by David F. Burrelli, and CRS Report R42003, *The Repeal of "Don't Ask, Don't Tell": Issues for Congress*, by David F. Burrelli.

CRS Point of Contact: David F. Burrelli, x7-8033.

[21] Report of the Comprehensive Review of the Issues Associated with a Repeal of Don't Ask, Don't Tell, November 30, 2010: 139.

Military Regulations Regarding Marriage

Background: In 1996, the Defense of Marriage Act (DOMA) was enacted (P.L. 104-199). Under this law, the federal government does not recognize same-sex marriages, the law allows states to refuse to recognize such marriages, and defines marriage for federal benefit purposes, as the union of one man and one woman. A few states have recognized same-sex marriages. The Attorney General, Eric Holder, announced in a letter to Speaker of the House, John A. Boehner, that the definition of marriage as set forth in DOMA was "unconstitutional."[22] Under Title 10, U.S.C., for example, certain military benefits, such as military health care, describe who are eligible beneficiaries, including "Spouse," "Former Spouse," "Widow," and "Widower." Following the repeal of DADT, a service member who marries a same-sex partner in a state that recognizes such, would be prevented from providing the spouse with military health care and certain other benefits because of restrictions under DOMA.

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 534 reaffirms that under DOMA, the term "marriage" as applied to any service member or civilian employee of the Department of Defense shall mean only a union between one man and one woman, and the word "spouse" refers only to a person of the opposite sex who is a husband or wife.	Section 527 states "A military chaplain who, as a matter of conscience or moral principle, does not wish to perform a marriage may not be required to do so."	The Senate language was adopted as Section 544. DOMA remains unchanged.

Discussion: The matter of DOMA is currently being contested in the courts. The language above recommits the House to the definition of marriage under DOMA. The Senate language allows military chaplains to opt out of performing any marriage as a matter of conscience or moral principle.

Reference(s): CRS Report RL31994, *Same-Sex Marriages: Legal Issues*, by Alison M. Smith.

CRS Point of Contact: David F. Burrelli, x7-8033.

[22] "Attorney General Declares DOMA Unconstitutional," *CNN Politics*, February 23, 2011, available at http://whitehouse.blogs.cnn.com/2011/02/23/attorney-general-declares-doma-unconstitutional/.

Use of Military Installations as Sites for Marriage Ceremonies and Participation of Chaplains and Other Military and Civilian Personnel in Their Official Capacity

Background: See the previous issue for a discussion of the 1996 Defense of Marriage Act (P.L. 104-199). According to reports, in April 2011, Navy Chief of Chaplains, Rear Adm. M.L. Tidd, announced on April 13, 2011, a change in policy allowing same-sex marriages to be performed in Navy Chapels. Following criticism by certain Members of Congress, on May 10, 2011, the policy change was "suspended."

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 535 establishes that marriages performed on DOD installations involving the participation of DOD military or civilian personnel serving in their official capacity must comply with DOMA which defines marriage as the legal union between one man and one woman.	No similar provision.	The House provision was not adopted. DOMA remains unchanged.

Discussion: Rear Adm. Tidd announced the change in guidance was suspended "until further notice pending additional legal and policy review and inter-Departmental coordination."[23] As such, it appears that the services are or will begin this process. The House language would recommit DOD to the definition of marriage under DOMA.

Reference(s): CRS Report RL31994, *Same-Sex Marriages: Legal Issues*, by Alison M. Smith.

CRS Point of Contact: David F. Burrelli, x7-8033.

[23] Volsky, Igor, "Navy Rescinds Same-Sex Marriage Ruling Pending Legal and Policy Review," May 11, 2011, available at http://thinkprogress.org/lgbt/2011/05/11/177408/navy-marriage-rescind/.

*Protection of Child Custody Arrangements for Parents Who Are Members of the Armed Forces

Background: Military members who are single parents are subjected to the same assignment and deployment requirements as are other service members. Deployments to areas that do not allow dependents (such as aboard ships or in hostile fire zones) require the service member to have contingency plans to provide for their dependents. (See U.S. Department of Defense, Instruction No. 1342.19, "Family Care Plans," May 7, 2010.) Concerns have been raised that the possibility or actuality of military deployments may encourage courts to deny custodial rights of a service member to a former spouse or others. Also, concerns have been raised that custody changes may occur while the military member is deployed and unable to attend court proceedings.

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 573 amends the Service Members Civil Relief Act to require courts to render temporary custody orders based on deployments and to reinstate the service member as custodian unless the court determines that reinstatement is not in the child's best interest. This language prohibits courts from using deployment, or the possibility of deployment, in determining the child's best interest. In cases where a State provides a higher standard of protection of the rights of the service member, then the State standards apply.	No similar provision.	The House provision was not adopted.

Discussion: This language would allow courts to temporarily assign custody of a child for the purposes of deployment without allowing the (possibility of) deployment to be prejudicially considered against the service member in a custody hearing.

CRS Point of Contact: David F. Burrelli, x7-8033.

Improved Sexual Assault Prevention and Response in the Armed Forces

Background: Issues of sexual assault in the Armed Forces have been of concern to Congress for decades. Over the years, Congress has, on numerous occasions, addressed the issue via studies, hearings and legislation. Title V (subtitle I) of H.R. 1540 contains seven Sections concerning sexual assault. (Note: Section numbers and order do not necessarily correspond across reported bills.)

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 581 requires the director of the Sexual Assault Prevention and Response Office be a general or flag officer or comparable senior executive service position.	Section 561 contains the same language as Section 581 in the House bill.	Section 583 incorporated this language.
Section 582 requires a full time Sexual Assault Response Coordinator (SARC) and a full-time Sexual Assault Victims Advocate (SAVA) be assigned to each brigade (or equivalent unit level).	Section 562 requires the Secretary of Defense to issue guidance to the Service Secretaries to determine the appropriate number of Sexual Assault Response Coordinators and Sexual Assault Victims Advocates.	Section 584 adopts the House language with a clarifying amendment.
Section 583 entitles members and certain dependents who are victims of sexual assault with legal assistance from a military legal assistance counsel and assistance of SARCs/ and SAVAs.	Section 563 entitles members who are victims of sexual assault with legal assistance from a military legal assistance and assistance of SARCs/SAVAs.	Section 581 requires the Secretary of Defense to issue regulations affording members and dependents access to legal assistance and restricted reports to SARCs/SAVAs and certain health care providers.
Section 584 creates a new Art. In the UCMJ providing "a confidentiality privilege in military tribunals for communication between sexual assault victims and Sexual Assault Response Coordinators, Sexual Assault Victims Advocates, and DOD SAFE Help line personnel."	Section 564 creates confidentiality provisions in the Manual for Courts-Martial providing confidentiality between victims and Sexual Assault Response Coordinators/Sexual Assault Victims Advocates.	Neither provision is included although the Conferees note that confidentiality issues are being handled administratively.
Section 585 requires DOD to maintain records relating to sexual assault for 100 years and requires that victims are provided with a copy of court-martial proceedings in certain circumstances.	Section 566 creates a comprehensive policy and procedures regarding the retention and access to evidence and records relating to sexual assaults involving members of the armed forces.	Section 586 adopts the Senate language except that documentary evidence must be kept for not less than the length of time investigative records are retained and that victims will be provided a copy of all prepared records of the court-martial if the victim testified in the proceedings.
Section 586 requires an expedited consideration and approval for a Permanent Change of Station or unit transfer for a member who is the victim of sexual assault.	Section 565 requires expedited consideration and approval for a Permanent Change of Station or unit transfer for a member who is the victim of sexual assault.	Section 582 requires the issuance of regulations providing victims with an application process for permanent change of station and an appeal process if that application is disapproved.
Section 587 requires each military department to provide sexual assault training and education at each level	No similar provision.	

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
of professional military education.		Section 585 adopts the House language with a technical amendment.

Discussion: These sections elevate the handling of sexual assault case management, set standards for record keeping, allow victims to seek transfers or other actions to reduce the possibility of retaliation, and establish training requirements. The House report language notes, in two sections, that $45 million is to be set aside for training, although that language does not exist in the legislation. It is also important to note that those serving as Sexual Assault Response Coordinators and Sexual Assault Victims Advocates must either be members of the military or federal employees, thereby preventing private, self-assigned, advocacy groups from financially exploiting the issue.

CRS Point of Contact: David F. Burrelli, x7-8033.

Wounded Warrior Careers Program

Background: Section 594 would require the Secretary of Defense to carry out a career-development services program for severely wounded warriors of the Armed Forces, and their spouses if appropriate, during fiscal years 2012 through 2016. The provision directs the Secretary to obligate $1 million for the program using merit-based or competitive procedures from funds appropriated for Defense-wide Operation and Maintenance Administrative and Service-wide Activities. It also requires DOD to submit a cost-benefit analysis of the program to Congress within one year following enactment of the bill.

The program would be required to include at a minimum the following services:

1. Exploring career options;
2. Obtaining education, skill, aptitude, and interest assessments;
3. Developing veteran-centered career plans;
4. Preparing resumes and education/training applications;
5. Acquiring additional education and training, including internships and mentorship programs;
6. Engaging with prospective employers and educators when appropriate;
7. Entering into various kinds of occupations (whether full-time, part-time, paid, or volunteer, or self-employment as entrepreneurs or otherwise);
8. Advancing in jobs and careers after initial employment; and
9. Identifying and resolving obstacles through coordination with the military departments, other departments and agencies of the federal government.

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 594 would direct the Secretary of Defense to implement a program to provide career-development services to both current and former members of the military who were wounded in the line of duty.	No similar provision.	The provision is not adopted although the conferees note that DOD has established an Education and Employment Initiative.

Discussion: The program would provide a range of services including testing and assistance in developing career plans, preparing resumes, and improving skills. Those services would be provided at as many as 20 locations in geographic areas with the largest concentrations of wounded former and current service members. Based on information from DOD's Office of Wounded Warrior Care and Transition Policy and the National Organization on Disability, the Congressional Budget Office (CBO) estimates that implementing this provision would cost $60 million over the 2012-2016 period, assuming that the program opens and maintains 20 locations in the United States for most of that period. Congress has stated its interest in monitoring the outcome of DOD's Education and Employment Initiative.

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

Comptroller General Study of Military Necessity of Selective Service System (SSS) and Alternatives

Background: The United States ended the involuntary induction of men into the Armed Forces ("the draft") in 1973. The requirement that men register for the draft upon reaching age 18 was suspended in 1975, but reinstated in 1980. Current law requires that

> The Selective Service System shall be maintained as an active standby organization, with (1) a complete registration and classification structure capable of immediate operation in the event of a national emergency, and (2) personnel adequate to reinstitute immediately the full operation of the System, including military reservists who are trained to operate such System and who can be ordered to active duty for such purpose in the event of a national emergency (including a structure for registration and classification of persons qualified for practice or employment in a health care occupation essential to the maintenance of the Armed Forces).[24]

SSS is an independent agency with a budget of about $24 million per year. It has a staff of approximately 130 civilian employees, 175 National Guard and Reserve officers, and 11,000 trained volunteers who would staff local boards in the event the draft were reinstated.

Since the U.S. Armed Forces became "all volunteer" in 1973, some have questioned the need to maintain the Selective Service System. Opponents argue that a return to conscription is highly unlikely and, as such, money spent on SSS is wasteful. They also argue that even if conscription did need to be reinstated at some time in the future, a new agency could be established and conscription begun in a fairly short period of time. Supporters of SSS argue that the cost of the agency is very small, and that the ability to restart conscription rapidly and equitably is an important strategic hedge. They dispute the notion that an equitable conscription system could be rapidly put into place if events required it in the future.

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 595 requires the Comptroller General to conduct a study on the criticality of SSS to DOD's ability to meet "future military manpower requirements that are in excess of the ability of the all-volunteer force" and to determine fiscal and national security impacts of three options: (1) disestablishing SSS, (2) putting SSS into "deep standby mode", and (3) disestablishing SSS, ending registration, but requiring another federal department to maintain the SSS registration databases. The report is also to include information on the feasibility, cost, and time required to reestablish SSS in the future for each of these options.	No similar provision.	Section 597 largely adopts the House provision, while making a few changes in the description of the study and adding a month to the deadline for its completion.

[24] 50 U.S.C. Appendix, Section 460(h)

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Finally, it requires an assessment on the feasibility of (1) using federal and state institutions to maintain registration databases and (2) integrating "alternative registration databases" in order to update SSS databases under each of the three options.		

Discussion: The House provision would require the Government Accountability Office (GAO) to conduct a study on the Selective Service System to determine the fiscal and national security implications of several alternatives to the current system. The Senate bill contained no similar provision. The final bill largely adopts the House provision, while making a few changes in the description of the report—the report is to assess the necessity of the SSS, rather than its criticality; the definition of deep standby mode is changed to include personnel sufficient to conduct "necessary functions"—and extending the deadline for its completion from March 31 to May 1, 2012.

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

Playing of "Taps" at Military Funerals, Memorial Services, and Wreath Laying Ceremonies

Background: Military funeral honors, memorial services and wreath laying ceremonies include the playing of a bugle call commonly known as "Taps." In cases where a trained bugler is not available, DOD approved the use of a ceremonial bugle that contains a device that plays a recorded version of Taps. Some have complained that the use of such a recorded device is unsuitable and inauthentic.

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 596 expresses the sense of Congress that Taps should be played by a live solo bugler at military funerals, memorial services and wreath laying ceremonies.	No similar provision.	The House provision was not adopted.

Discussion: This language only expressed the sense of the House with regard to the playing of Taps and does not create a requirement for the performance of Taps at these events.

Reference(s): CRS Report RS21545, *Military Funeral Honors and Military Cemeteries: Frequently Asked Questions*, by Barbara Salazar Torreon.

CRS Point of Contact: David F. Burrelli, x7-8033.

*Military Pay Raise

Background: Increasing concern with the overall cost of military personnel, combined with ongoing military operations in Afghanistan, and, at the time, Iraq, has continued to focus interest on the military pay raise. Title 37 U.S.C. Section 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 FY2012 President's Budget request for a 1.6% military pay raise was consistent with this formula. However, since the attacks on the World Trade Center on September 11, 2001, (aka "9/11"), Congress has approved the pay raise as the ECI increase plus 0.5%; this occurred in fiscal years 2004, 2005, 2006, 2008, 2009, and 2010. The pay raise was equal to the ECI in 2007 and 2011.

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 601 supports a 1.6% (equal to the ECI) across-the-board pay raise that would be effective January 1, 2012.	No similar provision.	No similar provision, Therefore, the automatic provisions of 37 U.S.C. 1009 will result in a 1.6% across-the-board pay raise effective January 1, 2012.

Discussion: A military pay raise larger or smaller 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.

The Congressional Budget Office (CBO) estimates that the total cost of a 1.6% military pay raise would be $1.2 billion in 2012.[25]

The Senate and the Conference did not address the issue of the military pay raise. As a result, the automatic provisions of 37 U.S.C. will result in a 1.6% (equal to the Employment Cost Index) across-the board pay raise effective January 1, 2012.

Reference(s): Previously discussed in CRS Report R41316, *FY2011 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by Charles A. Henning, and CRS Report R40711, *FY2010 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by Don J. Jansen. See also CRS Report RL33446, *Military Pay and Benefits: Key Questions and Answers*, by Charles A. Henning.

CRS Point of Contact: Charles Henning, x7-8866.

[25] Congressional Budget Office Cost Estimate, H.R. 1540: National Defense Authorization Act for Fiscal Year 2012, May 20, 2011, available at http://www.cbo.gov/ftpdocs/122xx/doc12202/hr1540.pdf.

Death Gratuity and for Reserves who Die during Authorized Stay at their Residence During Inactive Duty Training.

Background: Samson Luke, a captain in the Arkansas National Guard, went home for the evening after a day of inactive duty training at Fort Chaffee, fully expecting to return the next morning. That evening, at his off-base home, Luke died, reportedly of heart problems. Since he was not on-base at the time, although he was eligible to spend the night on-base or at a nearby hotel, his surviving wife was not eligible to receive the $100,000 Death Gratuity benefit.[26]

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
No similar provision.	Section 634 would allow those who are undergoing inactive duty training, but residing in their own residences to be eligible for the Death Gratuity. In addition, the Secretary concerned may provide for the recovery, care and disposition of the remains of such a person. The provision would be retroactive to Jan. 10, 2010-the day Captain Luke died.	The House receded with an amendment that would remove the retroactive application of the provision. The conferees recommend that the Secretary of the Army use appropriate authority (including Section 127, title 10 USC) to equitably resolve such cases of inactive duty training deaths not covered by the Death Gratuity, including those that occurred prior to enactment of this language.

Discussion: When is a Reservist on duty? Under current law, when such a person is serving on active duty (such as during a call-up), serving on inactive duty training (such as the routine one weekend a month duty when members of the National Guard train), traveling to and from such training, or if away from home as the result of such training. Because Captain Luke returned home for the evening, he was not considered to be in a training capacity and therefore ineligible for certain death benefits. The Senate provision would have extended the law to cover individuals in such situation.

CRS Point of Contact: David F. Burrelli, x7-8033.

[26] Drop and Gimme Benefits, *Arkansas Democrat-Gazette (Little Rock)*, Dec. 2, 2011: 8.

Special Survivor Indemnity Allowance (SSIA) for Those Affected by the Survivor Benefit Plan Annuity Offset for Dependency and Indemnity Compensation/*Repeal of the Offset

Background: The Survivor Benefit Plan (SBP) provides an annuity to an eligible spouse of a deceased military member/retiree. Dependency and Indemnity Compensation provides compensation to a surviving spouse of a member/retiree who suffered a disability that is service connected. A surviving spouse who is eligible for both will have his or her SBP reduced or offset on a dollar-for-dollar basis by Dependency and Indemnity Compensation (DIC). For certain beneficiaries affected by the offset, Section 644 of the National Defense Authorization Act for Fiscal Year 2008, created a new Special Survivor Indemnity Allowance (SSIA) to be paid to survivors of covered service members. This monthly allowance, effective October 1, 2008, was $50, and is scheduled to increase annually by $10 through FY2013. The benefit was scheduled to end in 2016. However, during the 111th Congress, SSIA was made more generous in that for the years 2014 through 2017, the amount would increase from $150, to $200, $275, and finally, $310, after which the benefit will terminate on October 1, 2017 (see the CRS report below). The amount received under SSIA may not be greater than the amount of the SBP-DIC offset. (SSIA was extended to survivors of active duty members later in October, 2008.) Critics have noted that with the earlier repeal of the Social Security offset, survivors could be receiving three government subsidized benefits based on the same period of service; a form of "triple dipping."

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 651 increases the monthly amount of SSIA from FY2013 through FY2017 and establishes new amount from FY2018 through FY2021 as follows: FY2013 from $90 to $163; FY2014 from $150 to $200; FY2015 from $200 to $215; FY2016 from $275 to $282; FY2017 from $310 to $314; FY2018 set at $9; FY2019 set at $15; FY2020 set at $20; and FY2021 set at $27.	Section 625 would repeal the SBP-DIC offset.	Neither provision was adopted.

Discussion: Efforts in previous years to end the SBP-DIC offset have not been successful. In the current budget situation, ending the offset appears unlikely. Advocates for these survivors view SSIA as a better option to provide these beneficiaries more money. Critics note that providing more money than was contracted for under the original SBP was unjustified, particularly under these budgetary conditions. The Senate approach was to eliminate the offset entirely.

Reference(s): CRS Report RL31664, *The Military Survivor Benefit Plan: A Description of Its Provisions*, by David F. Burrelli.

CRS Point of Contact: David F. Burrelli, x7-8033.

*TRICARE Prime Annual Enrollment Fee Increase for Military Retirees

Background: TRICARE is a health care program serving uniformed service members, retirees, their dependents and survivors. Section 701 of H.R. 1540 would limit future increases in TRICARE Prime enrollment fees for military retirees and their dependents to the annual cost-of-living adjustment (COLA) for military retirement annuities beginning in fiscal year 2013. Under current law,[27] the Secretary of Defense may adjust TRICARE Prime annual enrollment fees effective October 1, 2011. The House Armed Services Committee (HASC) Personnel Subcommittee marked up the original bill to extend a prohibition on TRICARE Prime annual enrollment fee increases for one year.[28] Such provisions have been included regularly in annual national defense authorizations. However, this provision was removed this year in the HASC chairman's mark. By not extending the existing prohibition on fee increases, the bill would allow the Obama Administration to implement its proposal to increase the annual enrollment fee by $30 per year for individual and $60 per year for family enrollments.[29] The Administration also has proposed to index future increases in those enrollment fees to the per capita growth rate in national health expenditures as published by the Centers for Medicare and Medicaid Services; that growth rate is currently projected to be about 5 percent to 6 percent per year over the next decade.[30] In contrast, the Congressional Budget Office (CBO) estimates that under Section 701, indexing annual enrollment fee increases to the annual increases in the military retirement COLA (which are based on the consumer price index for urban wage earners and clerical workers) would limit the fee increases to an average of about 2 percent per year over that same period.

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 701 would limit increases in the TRICARE Prime annual enrollment fee for military retirees to the annual percentage increase in retired pay.	Section 701 contains the same provision.	Under Section 701, the Senate receded with an amendment that would limit the annual increase in TRICARE Prime enrollment fees to the amount equal to the increase in retired pay beginning Oct. 1, 2012, and would clarify that the basis for determining increases in these enrollment fees for FY 2013 and thereafter is the enrollment fee for retirees who enrolled for the first time in FY 2012.

[27] 10 U.S.C. 1097(e)

[28] Representative Joe Wilson, "Military Personnel Subcommittee Chairman Releases Details of National Defense Authorization Act," press release, May 3, 2011, available at http://joewilson.house.gov/News/DocumentSingle.aspx?DocumentID=239164.

[29] Office of the Undersecretary of Defense (Comptroller)/CFO, *United States Department of Defense Fiscal Year 2012 Budget Request Overview*, February 2011, p. 3-3, available at http://comptroller.defense.gov/defbudget/fy2012/FY2012_Budget_Request_Overview_Book.pdf.

[30] Testimony of Jonathan Woodson, M.D., Assistant Secretary of Defense (Health Affairs) before the Senate Armed Services Committee Personnel Subcommittee, May 4, 2011, available at http://www.tricare.mil/tma/congressionalinformation/downloads/2011/05-04-11%20SASC-P%20DOD%20Focus%20Hearing%20Statement%20_Woodson_%20-%20FINAL.pdf

Discussion: Currently, about 700,000 military retiree households are enrolled in TRICARE Prime, covering about 1.6 million beneficiaries. If the Administration proposal is implemented as permitted under the House-passed version of H.R. 1540, the TRICARE Prime enrollment fees in 2012 will be increased to $260 (from $230) for those who enroll as individuals and $520 (from $460) for those who enroll their families. CBO estimates that limiting future growth in the enrollment fees to the military retirement COLA would cost $186 million over the 2013–2016 period.

Reference(s): Previously discussed in CRS Report RL34590, *FY2009 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by Lawrence Kapp; CRS Report R40711, *FY2010 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by Don J. Jansen; and CRS Report RS22402, *Increases in Tricare Costs: Background and Options for Congress*, by Don J. Jansen.

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

Behavioral Health Support for Reservists

Background: Section 703 of H.R. 1540 would amend Title 10, U.S.C., to require that the Secretary of Defense provide to any member of the reserve components performing inactive-duty training during scheduled unit training assemblies free access to mental health assessments with a licensed mental health professional who would be available for referrals during duty hours on the premises of the principal duty location of the member's unit. Section 703 would further amend Title 10 to provide that each member of a reserve component of the Armed Forces while participating in annual training or individual duty training shall have access to behavioral health support programs. The behavioral health support programs would include one or any combination of the following: programs providing access to licensed mental health providers in armories, reserve centers, or other places for scheduled unit training assemblies; and programs providing training on suicide prevention and post-suicide response.

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 703 would require Reservists to have access to mental health assessment services during scheduled unit training and assemblies.	No similar provision.	Under Section 703, the Senate receded with an amendment that would make access to mental health assessments permissive and would require that funding for these programs be provided from operations and maintenance accounts of the reserve components.

Discussion: CBO estimates that implementing Section 703 would cost $118 million over the 2012-2016 period. CBO based its estimate of this provision's costs on pilot programs providing such care to the California and Montana National Guards. For those programs, guard units contracted with behavioral health professionals to be available during drill weekends. Based on information from DOD, CBO estimates that the Montana and California programs combined cost about $1 million per year and covered about 25,000 reserve members. After scaling those costs upward to cover the roughly 700,000 drilling members of the selected reserve and adjusting for inflation, CBO estimates this provision would require appropriations of almost $30 million per year when fully implemented. Costs would be lower in the first year because of the time needed to establish regulations and set up the required programs.

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

Uniformed Services Family Health Plan Enrollment

Background: Section 704 of H.R. 1540 would amend Title 10, U.S.C., to close enrollment in the Uniformed Services Family Health Plan (USFHP) to Medicare-eligible beneficiaries of the military health system. Those currently enrolled in USFHP would be allowed to remain in the program for as long as they wish. However, anyone who enrolled after the end of fiscal year 2012 would be forced to leave USFHP once they reach the age of 65. At that point, such individuals would move to the regular Medicare/TRICARE-for-Life benefit. These changes were included in the Administration's 2012 Budget.

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 704, prohibits a Medicare-eligible military retiree from newly enrolling in the Uniformed Services Family Health Plan after September 30, 2012.	Section 703 contained a similar provision.	Section 708 adopts the House language.

Discussion: USFHP, a TRICARE option available to active duty dependents, retirees and retiree family members through not-for-profit health care systems in six areas of the United States, originated separately from the other TRICARE options. Six former, government-owned Public Health Service (PHS) hospitals were closed in the late 1970s and sold to non-profit health care entities; now owned by:

- Johns Hopkins Medicine (MD)
- Christus Health (TX)
- Pacific Medical Centers (WA)
- Martin's Point Health Care (ME, NH, VT)
- Brighton Marine Health Center (MA, RI)
- Saint Vincent Catholic Medical Centers (NY)

These health systems now operate plans similar to TRICARE Prime for military beneficiaries that are collectively know as the "Uniformed Services Family Health Plan." Initially, these hospitals were legislatively "deemed" as equivalent to DOD military hospitals and DOD paid for beneficiary hospitalizations and outpatient visits. With the advent of TRICARE in 1994,[31] DOD changed its payment model to a per member per month "capitated fee" and the USFHP were responsible for managing the care. All categories of beneficiaries who live in these geographic areas are eligible to enroll in the USFHP (both Medicare-eligible and non-Medicare). The law[32] currently makes most Medicare-eligible retirees ineligible for TRICARE unless they enroll in and pay Medicare Part B premiums. Medicare-eligible retirees enrolled in USFHP, however, are not required to enroll in Medicare Part B. Because DOD believes that it pays a higher capitated rate than the equivalent Medicare capitated plan, it believes that the Government can reduce expenditures if future Medicare-eligible USFHP enrollees are required to enroll in Medicare Part

[31] Section 731 of the National Defense Authorization Act for Fiscal Year 1994 (P.L. 103-160).

[32] 10 U.S.C. 1086.

B to retain TRICARE coverage under the TRICARE for Life plan. Medicare Part B premiums are currently $96.40 per month for individuals with incomes less than $85,000 per year. The Congressional Budget Office (CBO) cost estimate for this provision concurs and estimates that limiting enrollment in USFHP would result in a net savings to the federal government of about $76 million over the 2013-2021 period.[33]

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

[33] Congressional Budget Office Cost Estimate, H.R. 1540: National Defense Authorization Act for Fiscal Year 2012, May 20, 2011, p. 14, available at http://www.cbo.gov/ftpdocs/122xx/doc12202/hr1540.pdf.

*Unified Medical Command

Background: Section 711 of H.R. 1540 would amend Title 10, U.S.C., to require the President, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, through the Secretary of Defense, to establish a unified command for medical. The principal function of the command would be to provide medical services to the Armed Forces and other health care beneficiaries of the Department of Defense. The Section would amend Title 10, to add a new Section 167b. The Section would require that all active military medical treatment facilities, training organizations, and research entities of the Armed Forces be assigned to the unified medical command, unless otherwise directed by the Secretary of Defense. The commander of the unified medical command would hold the grade of general or, in the case of an officer of the Navy, admiral while serving in that position, without vacating their permanent grade. The commander of the unified medical command would be appointed to that grade by the President, with the advice and consent of the Senate, for service in the position. The unified medical command would have the following subordinate commands:

1. A command that includes all fixed military medical treatment facilities, including elements of the Department of Defense that are combined, operated jointly, or otherwise operated in such a manner that a medical facility of the Department of Defense is operating in or with a medical facility of another department or agency of the United States.
2. A command that includes all medical training, education, and research and development activities that have previously been unified or combined, including organizations that have been designated as a Department of Defense executive agent.
3. A Defense Health Agency to which would be transferred the TRICARE Management Activity and all functions of the TRICARE Program.

The commander of the unified medical command would conduct all affairs of the command relating to medical operations activities including developing programs and doctrine; preparing and submitting to the Secretary of Defense program recommendations and budget proposals for the forces assigned to the unified medical command; exercising authority, direction, and control over the expenditure of funds for the Defense Health Program, forces assigned to the unified medical command and for military construction funds of the Defense Health Program; training assigned forces; conducting specialized courses of instruction for commissioned and noncommissioned officers; and ensuring the interoperability of equipment and forces.

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
Section 711 would require the establishment of a Unified Medical Command.	No similar provision.	Under Section 716, the Senate receded with an amendment requiring the Secretary of Defense to submit to the congressional defense committees a report on the options considered and developed in this matter and preventing the Secretary of Defense from implementing any restructuring of the defense health system until 120 days after the Comptroller General submits to

House (H.R. 1540)	Senate (S. 1867)	P.L. 112-81
		Congress a report reviewing each option.

Discussion: The current organizational structure of the military health system (MHS) has long been considered by many observers to present an opportunity to gain efficiencies and save costs by consolidating administrative, management, and clinical functions. Recent Government Accountability Office testimony summarized these views, stating that

> The responsibilities and authorities for the MHS are distributed among several organizations within DOD with no central command authority or single entity accountable for minimizing costs and achieving efficiencies. Under the MHS's current command structure, the Office of the Assistant Secretary of Defense for Health Affairs, the Army, the Navy, and the Air Force each has its own headquarters and associated support functions.
>
> DOD has taken limited actions to date to consolidate certain common administrative, management, and clinical functions within its MHS. To reduce duplication in its command structure and eliminate redundant processes that add to growing defense health care costs, DOD could take action to further assess alternatives for restructuring the governance structure of the military health system. In 2006, if DOD and the services had chosen to implement one of the reorganization alternatives studied by a DOD working group, a May 2006 report by the Center for Naval Analyses showed that DOD could have achieved significant savings. Our adjustment of those savings from 2005 into 2010 dollars indicates those savings could range from $281 million to $460 million annually, depending on the alternative chosen and the numbers of military, civilian, and contractor positions eliminated.[34]

The Administration's Statement of Administration Policy on H.R. 1540 dated May 24, 2011, strongly objected to the provision, stating:

> The Administration strongly objects to Section 711, which would require the President to create a new unified combatant command for medical operations. DOD will shortly complete a study on how to best deliver high-quality medical care to service members and their families in an effective and cost-efficient manner. Among the options this study will consider is a joint medical command similar to this provision; however, this Section presumes the outcome of the study and of decisions to be made by DOD leadership on this important subject. [35]

The Senate amendment allows the process to move forward in a more measured pace.

Reference(s): Previously discussed in CRS Report RL34590, *FY2009 National Defense Authorization Act: Selected Military Personnel Policy Issues*, coordinated by Lawrence Kapp.

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

[34] U.S. Government Accountability Office, *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*, GAO-11-635T, May 25, 2011, pp. 3-4, available at http://www.gao.gov/new.items/d11635t.pdf.

[35] U.S. Executive Office of the President, Office of Management and Budget, Statement of Administration Policy, May 24, 2011, available at http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/112/saphr1540r_20110524.pdf

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