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FY2016 National Defense Authorization Act: Selected Military Personnel Issues

Updated December 17, 2015

Congressional Research Service
https://crsreports.congress.gov
R44120

CRS REPORT
Prepared for Members and
Committees of Congress

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SUMMARY

R44120

December 17, 2015

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FY2016 National Defense Authorization Act: Selected Military Personnel Issues

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 and the final bill, S. 1356, as enacted (P.L. 114-92). 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, or tax implications of policy choices, 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.

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Introduction

Each year, the House and Senate Armed Services Committees take up national defense authorization 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 Chambers' 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 is intended to highlight those personnel-related issues that may generate high levels of congressional and constituent interest, and compares differences between House and Senate versions.

This report summarizes selected highlights of S. 1356, the National Defense Authorization Act for Fiscal Year 2016 (FY2016 NDAA), which was passed by the House of Representatives on November 5, 2015, passed by the Senate on November 10, 2015, and signed by the President on November 25, 2015 (P.L. 114-92), and an initial bill, H.R. 1735, that was passed by both the House and the Senate.

The President had vetoed H.R. 1735, an earlier version of the FY2016 NDAA, on October 22, 2015. In his veto message, the President objected that the bill would have provided more funding for defense-related activities than would be allowed under spending caps that then were in effect, which initially had been imposed by P.L. 112-25, the Budget Control Act of 2011 (BCA). The President objected to legislation that would, in effect, allow defense-related spending for FY2016 to exceed the BCA defense spending cap without allowing similar budgetary leeway for nondefense related spending, which was subject to a similar BCA spending cap.

Subsequently, the President signed into law the Bipartisan Budget Act of 2015 (P.L. 114-74) which raised the FY2016 spending caps for both defense and nondefense spending. The text of the initial bill (H.R. 1735) then was modified to comply with the revised spending caps while retaining intact the final military personnel provisions discussed in this report. For procedural reasons, the text of that revised NDAA then was substituted for the original text of S. 1356, an unrelated bill previously passed by the Senate. The amended version of S. 1356 (i.e., the revised FY2016 NDAA) then was passed by the House and Senate and signed by the President.

The Congressional Budget Office issued cost estimates for these bills on May 4, May 11, June 3, September 30, and November 4, 2015[1] [2] [3] [4] [5]

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*

[1] https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr1735.pdf.

[2] https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr1735hasc.pdf.

[3] https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/s1376.pdf.

[4] https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/H.R.1735.pdf.

[5] https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/s1356.pdf.

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.

*Active Duty End Strengths

Background: The authorized active duty end-strengths[6] 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 anticipation 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 and 182,000 in the FY2017-2019 timeframe.

House-Passed H.R. 1735	Senate-Passed H.R. 1735	P.L. 114-92 (S. 1356)
Section 401 would authorize a total FY2016 active duty end strength of 1,308,915 including 475,000 for the Army 329,200 for the Navy 184,000 for the Marine Corps 320,715 for the Air Force Section 402 would amend 10 USC 691 to set minimum end-strengths as follows: 475,000 for the Army 329,200 for the Navy 184,000 for the Marine Corps 317,000 for the Air Force	Section 401 would authorize 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 317,000 for the Air Force Section 402 would repeal 10 U.S.C. 691, which sets 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 requires 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.	Section 401 authorized 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 Section 402 amended 10 USC 691 to set minimum end-strengths as follows: 475,000 for the Army 329,200 for the Navy 184,000 for the Marine Corps 317,000 for the Air Force It also modified the authority of the Secretary of Defense, allowing him to decrease these minimum end-strengths by up to 2%.

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 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 final bill are identical to the

[6] 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.

Administration's end-strength request with the exception of the Air Force, which is 3,715 higher than the Administration's request.

Section 402 of the initial Senate-passed bill (H.R. 1735) would have repealed 10 U.S.C. 691, which sets minimum end-strengths for the armed forces and stipulates that the DOD budget for any fiscal year shall include amounts necessary to maintain these congressionally directed minimum strength levels. Section 402 of initial Senate-passed bill (H.R. 1735) would also have allowed 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%.[7] Additionally, it would have allowed 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.[8]

Section 402 of the final bill (P.L. 114-92/S. 1356) adjusted the minimum end-strengths required by 10 USC 619 downward, to a level equal to or slightly below the authorized end-strengths set in section 401, and expanded the authority of the Secretary of Defense to reduce these minimum strengths downward, permitting a decrease of up to 2% versus the current 0.5%.[9]

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.

[7] The Secretary of Defense already has the authority to "vary"—increase or decrease—the number of Selected Reserve personnel by up to 3%. See 10 U.S.C. 115(f)(3).

[8] 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).

[9] 10 U.S.C. 691(e).

*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[10] 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).[11] 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	P.L. 114-92 (S. 1356)
Section 411 would authorize a total FY2016 Selected Reserve end strength of 818,000 including: Army National Guard: 342,000 Army Reserve: 198,000 Navy Reserve: 57,400 Marine Corps Reserve: 38,900 Air National Guard: 105,500 Air Force Reserve: 69,200 Coast Guard Reserve: 7,000	Section 411 would authorize the same Selected Reserves end-strength levels as the House provision.	Section 411 authorized the same Selected Reserves end-strength levels as the House and Senate provisions.

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 increases as follows: Navy Reserve (+100), Air National Guard (+500), Air Force Reserve (+2,100). The administration proposed no change in the authorized strength for the Coast Guard Reserve. The end-strengths authorized in the enacted bill (P.L. 114-92, S. 1356) were 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.

[10] The Selected Reserves contain those units and individuals designated as so essential to initial wartime missions that they have priority over all other Reserves. Members of the Selected Reserve are generally required to perform one weekend of training each month and two weeks of training each year, for which they receive pay and benefits. Some members of the Selected Reserve perform considerably more military duty than this, while others may only be required to perform the two weeks of annual training each year or other combinations of time. Members of the Selected Reserve can be involuntarily ordered to active duty under all of the principal statutes for reserve activation.

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

*Military Pay Raise

Background: Increasing concern with the overall cost of military personnel, combined with long-standing 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.[12]

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.[13]

House-passed H.R. 1735	Senate-Passed H.R. 1735	P.L. 114-92 (S. 1356)
No provision relating to a general increase in basic pay.	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. 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.	Sec. 601 capped the pay of officers in paygrades O-7 through O-10 at the Executive Schedule Level II rate of pay in effect during 2014, and specified that their rates of basic pay shall not increase. See discussion below for impact on servicemembers in paygrades O-6 and below.

Discussion: The initial House bill (H.R. 1735) 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 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.[14]

[12] 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.

[13] 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.

[14] H.Rept. 114-102, p. 151.

The initial Senate version (H.R. 1735) contained 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). It would also have maintained 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.

On August 28, President Obama sent a letter to Congress invoking 37 U.S.C. 1009(e) to set the pay raise for 2016 at 1.3%.[15] The final bill contained no general pay raise provision, thereby leaving in place the 1.3% increase specified by President Obama, although section 601 of the enacted bill (P.L. 114-92, S. 1356) freezes the basic pay of generals and admirals at 2014 levels.

Reference(s): For an explanation of the pay raise process and historical increases, see CRS In Focus IF10260, *Military Pay Raise*, by Lawrence Kapp. 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.

[15] Letter from the President to the Speaker of the House of Representatives and the President of the Senate, "Alternative Pay Plan for the Uniformed Services," August 28, 2015, available here: https://www.whitehouse.gov/the-press-office/2015/08/28/letter-president-alternative-pay-plan-uniformed-services.

*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.[16] 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 enacted bill (P.L. 114-92, S. 1356).

House-Passed H.R. 1735	Senate-Passed H.R. 1735	P.L. 114-92 (S. 1356)
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. 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. Sec. 633 would authorize continuation pay at 12 YOS for an additional 4 years of obligated service. Sec. 634 would require all retirement system changes to apply to servicemembers entering service on or after October 1, 2017.	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. Sec. 632 would reduce the defined benefit multiplier from 2.5% to 2.0% at 20 YOS. Sec. 633 would allow lump sum payment of retired pay. Sec. 634 would authorize continuation pay at 12 YOS for an additional 4 years of obligated service. Sec. 635 would allow DOD to modify YOS requirements for particular occupation specialties with Congressional notification.	Sec. 631 will reduce the defined benefit multiplier from 2.5% to 2.0% at 20 YOS for all those joining the service on or after January 1, 2018, or those who have fewer than 12 YOS on December 31, 2017 and elect to switch to the new system. It also repeals reduced COLAs for members under the age of 62. Sec. 632 will automatically enroll new servicemembers in the Thrift Savings Plan (TSP) with government contributions of 1% of basic pay beginning 60 days after entering service until 26 YOS (vested at 2 YOS) and would allow government matching contributions up to 5% of member's basic pay starting after 2 years of service (YOS) until 26 YOS. Sec. 633 will allow servicemembers to elect a lump sum payment of retired pay. Sec. 634 will authorize continuation pay at 12 YOS for an additional 4 years of obligated service. Sec. 635 establishes an effective date of January1, 2018 and requires Service Secretaries to provide an implementation plan by March 1, 2016.

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 enacted bill (P.L. 114-92, S. 1356) will 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. The new system will implement a reduced 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 authorized continuation pay at 12 years of service as a retention incentive. Existing

[16] Disability retirees may be eligible for retired pay prior to 20 years of service.

servicemembers and all those entering the military prior to January 1, 2018 will be grandfathered into the current system, and those with less than 12 YOS on December 31, 2017 will be given the option to elect the new system. Cost of Living Allowance (COLA) adjustments first enacted by the Bipartisan Budget Act of 2013 (P.L. 113-67 §403) are repealed by this Act.

Reference(s): 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.

*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 NDAAs, but issues remain. The final version of the bill contained numerous provisions regarding the legal procedures, policies and programs, and data collection and reporting for military sexual assaults.

House-Passed H.R. 1735	Senate-Passed H.R. 1725	P.L. 114-92 (S. 1356)
Procedural Issues Sec. 544 would allow special victim's counsel (SVC) representation at retaliatory proceedings related to the victim's report of the offense. Sec. 545 would require timely notification to a victim of a sex-related offense of the availability of SVC. Sec. 546 would extend certain rights and protections to a victim of a sex-related offense in any punitive proceedings. Sec. 547 would allow victim access to report of results of preliminary hearing under Article 32 of the Uniform Code of Military Justice. Sec. 548 would establish a minimum mandatory confinement period of 2 years for those convicted of certain sex-related offenses. 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. Sec. 554 would require DOD to retain case notes for all investigations of sex-related offenses. Sec. 555 would establish guidance regarding the release of mental health records of a victim in a sex-related offense.	Procedural Issues Sec. 547 would protect members serving as SVC from less favorable evaluations in relation to Courts-Martial representation. Sec. 551 would allow victims to be assisted by SVC when questioned by military criminal investigators. Sec. 552 would allow SVC to provide legal consultation in Freedom of Information Act requests and in complaints against the government. Sec. 546 would modify the military rules of evidence pertaining to corroboration of a confession or admission of the accused. Sec. 548 would allow victims of UCMJ offenses timely access to certain materials and information in relation to the offense. Sec. 549 would enhance enforcement of victims' rights regarding inadmissible evidence. Sec. 550 would allow victims to access complete records of courts-martial proceedings in cases where sentences could include punitive discharge. Sec. 553 would enhance the confidentiality of restricted reports of sexual assault in the military.	Procedural Issues Sec. 531 authorizes a victim to petition the Court of Criminal Appeals for a writ of mandamus. Sec. 533 allows SVC to provide legal consultation in Freedom of Information Act requests and in complaints against the government Sec. 534 requires timely notification to a victim of a sex-related offense of the availability of SVC. Sec. 536 enhances the confidentiality of restricted reports of sexual assault in the military. Sec. 541 requires DOD to retain case notes for all investigations of sex-related offenses. Sec. 544 protects members serving as SVC from less favorable evaluations in relation to Courts-Martial representation. Sec. 545 modifies the military rules of evidence pertaining to corroboration of a confession or admission of the accused.
Policies and Programs Sec. 541 would require the Secretary of Defense to make certain improvements to the Special Victims' Counsel Program. Sec. 542 would allow access to SVC services for DOD civilian employees. Sec. 543 would allow access to SVC services for certain former	Policies and Programs Sec. 554 would establish an office of complex investigation within the National Guard Bureau.	Policies and Programs Sec 532 allows access to SVC services for DOD civilian employees. Sec. 535 requires the Secretary of Defense to make certain improvements to the Special Victims' Counsel Program. Sec. 538 requires improved prevention and response to sexual assaults of male victims.

House-Passed H.R. 1735	Senate-Passed H.R. 1725	P.L. 114-92 (S. 1356)
dependents and former servicemembers. 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. 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.	Data, Reports, and Committees 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. Sec 556 would require the Comptroller General to report on sexual assault in the Army National Guard and Army Reserve. 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. 539 requires DOD to develop a strategy to prevent retaliation against members who report or intervene on behalf of a victim of sexual assault. Sec 540 requires sexual assault prevention and response training for Junior and Senior Reserve Officer Training Units (ROTC). Data, Reports, and Committees Sec 537 shortens the deadline for establishment of a defense advisory committee on investigation, prosecution, and defense of sexual assault in the Armed Forces. Sec. 542 requires the Comptroller General to report on sexual assault in the Army National Guard and Army Reserve. Sec. 543 requires 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%).[17] 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.[18] The enacted bill's (P.L. 114-92, S. 1356) provisions address some of these concerns about retaliation and male victims of sexual assault. These provisions also enhance the Special Victims' Counsel Program, and modify requirements for judicial proceedings, reporting, and sentencing in sex-related offenses.

Reference(s): 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*

[17] 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.

[18] 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.

*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, and gave the military services until January 1, 2016, to conduct women in the services reviews, to develop implementation plans, and to request waivers if deemed appropriate. On December 3, 2015, Secretary of Defense Ashton Carter announced that all military occupations were open to women with no exceptions.

House-Passed H.R. 1735	Senate-Passed H.R. 1735	P.L. 114-92 (S. 1356)
Sec. 533 would reduce the required congressional notification and waiting time for implementation of changes to assignment policies for women. Sec. 534 would add a requirement that occupational standards measure the combat readiness of combat units.	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.	Sec. 524 reduces the required congressional notification and waiting time for implementation of changes to assignment policies for women. Sec. 525 adds a requirement that occupational standards measure the combat readiness of combat units.

Discussion: In the National Defense Authorization Act for Fiscal Year 1994 (P.L. 103-160) Congress established requirements[19] 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," emphasized 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 FY2016 NDAA adds additional criteria for developing performance standards relating to combat unit readiness that could require DOD to undertake validation efforts for unit-level performance.

Under the law (10 U.S.C. §652), DOD must notify Congress of changes to assignment policies that open or close any category of unit, position, or career designator for females. Under previous law, Congress had a period of 30 days in continuous session (House and Senate) for review of these changes before DOD could take any action on implementing them (this provision is sometimes referred to as "notify-and-wait"). Changes made by the enacted bill (P.L. 114-92, S. 1356) shorten this waiting period to 30 calendar days. For DOD, this could 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.

[19] Gender Neutrality Requirement: In the case of any military occupational career field that is open to both male and female members of the Armed Forces, the Secretary of Defense—(1) shall ensure that qualification of members of the Armed Forces for, and continuance of members of the Armed Forces in, that occupational career field is evaluated on the basis of common, relevant performance standards, without differential standards or evaluation on the basis of gender; (2) may not use any gender quota, goal, or ceiling except as specifically authorized by law; and (3) may not change an occupational performance standard for the purpose of increasing or decreasing the number of women in that occupational career field.

Reference(s): Previously discussed in CRS Report R43647, *FY2015 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Barbara Salazar Torreon. See also CRS Report R42075, *Women in Combat: Issues for Congress*, by Kristy N. Kamarck.

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	P.L. 114-92 (S. 1356)
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.	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. Sec. 582 would require training to commence no later than six months after enactment. Sec. 583 expresses the sense of Congress that DOD should strengthen arrangements with other entities to provide training and support.	Sec. 661 requires 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.

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.[20] Changes to the military retirement system that would offer more options for retirement savings and continuation pay might also necessitate enhanced financial management training. The enacted bill (P.L. 114-92, S. 1356) includes provisions that 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).

[20] 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. Section 504 of Title 10, United States Code, also contains a provision that allows the service secretaries 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. Section 12102 of Title 10 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	P.L. 114-92 (S. 1356)
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.".	No similar provision.

Discussion:

Section 513 of the initial Senate-passed bill (H.R. 1735) would have linked the statutory requirements for eligibility to enlist in the reserve component with the requirements necessary to enlist in the active component. The enacted bill (P.L. 114-92, S. 1356) did not include this provision.

Reference(s): None.

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 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	P.L. 114-92
No similar provision.	Section 532 would amend 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."	Section 555 was identical to the Senate provision.

Discussion: The initial Senate-passed bill (H.R. 1735) adopted the recommendations proposed by the Military 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. It also stipulated that in the interim period, only those using REAP in the enrollment period immediately prior to the date of enactment could continue to use the program. The enacted bill (P.L. 114-92, S. 1356) contained the Senate provision.

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 Cassandria Dortch, and CRS Report R42755, *The Post-9/11 Veterans Educational Assistance Act of 2008 (Post-9/11 GI Bill): Primer and Issues*, by Cassandria Dortch.

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	P.L. 114-92 (S. 1356)
No similar provision	Section 590 directs the Secretary of Defense to provide covered individuals with a "Recognition of Service ID Card" that includes a photo of the individual, their name, and identifies them as a veteran.	No similar provision.

Discussion: The initial Senate passed bill (H.R. 1735) 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.

The enacted bill (P.L. 114-92, S. 1356) contained no "recognition of service ID card" provision. The Joint Explanatory statement noted:

> An alternative option exists for honorably discharged veterans to utilize state-issued ID cards that designate veteran status. Veterans in 44 states and the District of Columbia may apply for a driver's license or State issued ID card that designates veteran status... Additionally, since January 2014, honorably separated members of the Uniformed Services are able to obtain an ID card providing proof of military service through the joint DOD-VA eBenefits web portal.

Furthermore, on July 20, 2015, President Obama signed into law Public Law 114-31, the Veterans Identification Card Act of 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.

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 is contained in chapter 5 of Title 37 of the United States Code.

House Passed H.R. 1735	Senate Passed H.R. 1735	P.L. 114-92 (S. 1356)
Sec. 531would authorize the service secretaries 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.	Sec. 522 is identical to the House provision.

Discussion: Section 531 of the initial House-passed bill (H.R. 1735) would authorize the service secretaries 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.

Section 522 of the enacted bill (P.L. 114-92, S. 1356) incorporated the House provision.

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.

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.[21] The act confers a general right to reemployment on those who leave civilian employment to perform military service, but the cumulative length of service generally may not 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	P.L. 114-92 (S. 1356)
Section 565 would amend 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.	Section 562 is identical to the House provision.

Discussion: Section 565 of the initial House-passed bill (H.R. 1735) 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.

Section 562 of the enacted bill (P.L. 114-92, S. 1356) incorporated the House provision.

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.

[21] 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, or 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 (38 U.S.C. 101). 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	P.L. 114-92 (S. 1356)
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.	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 initial House-passed bill (H.R. 1735) provided that reservists who qualify for reserve retirement are to be "honored as veterans," but stipulated that this designation would not confer entitlement to any additional benefits.

The enacted bill (P.L. 114-92, S. 1356) did not incorporate the House provision.

Reference(s): For information on who qualifies as a veteran, see CRS Report R42324, *Who Is a "Veteran"?—Basic Eligibility for Veterans' Benefits*, by Scott D. Szymendera. For information on veterans' burial benefits see CRS Report R41386, *Veterans' Benefits: Burial Benefits and National Cemeteries*, by Barbara Salazar Torreon. 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.

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 from their military career. This intermission may last up to 3 years. The purpose is to allow servicemembers 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). The servicemember then would 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	P.L. 114-92 (S. 1356)
Sec. 532 would remove certain eligibility requirements and the current cap on the number of servicemembers eligible to take part in the career intermission program.	No provision.	Sec. 523 removes 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 spent in CIP (for a maximum six year follow-on obligation). DOD is required to submit a final assessment to Congress on the pilot program not later than March 1, 2016. The enacted bill (P.L. 114-92, S. 1356) would remove prohibitions on program participation by members of the Armed Forces serving under an agreement upon entry, or members receiving a critical military skill retention bonus. Section 523 removes the restriction that limits the number of annual participants in the program to 20 officers and 20 enlisted members.

Acquisition Workforce

Background: Over the past few years, Congress has been concerned with improving the recruitment, retention, and career management for the acquisition workforce.[22] Some have suggested that improving the quality of the acquisition workforce, requires additional incentives for high-performing military personnel to seek acquisition assignments, and enhanced professional military education in the area of acquisition.

House-Passed H.R. 1735	Senate-Passed H.R. 1735	P.L. 114-92 (S. 1356)
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. Sec. 813 would provide joint duty assignment credit for acquisition duty.	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.	Sec. 843 provides joint duty assignment credit for acquisition duty. Sec. 842 establishes 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.

Discussion: Military acquisition professionals oversee billions of dollars of funding for major defense acquisition programs. Many in Congress and DOD have an interest in ensuring a cadre of high-performing and qualified personnel for acquisition duty assignments. The Goldwater-Nichols Act of 1986 (P.L. 99-433) created incentives for officers to be educated and experienced in joint matters by tying joint professional military education and service in joint assignments to promotions and advancement to general/flag officer ranks. Provisions in the enacted bill (P.L. 114-92, S. 1356) extend joint duty credit to include service in acquisition-related assignments. The act also includes provisions that would allow officers to pursue a dual career track with a primary specialty in combat arms and a functional sub-specialty in an acquisition field. In addition the NDAA conferees encouraged the Secretary of Defense to ensure that the curriculum for Phase II joint professional military education includes acquisition matters to ensure successful performance in acquisition or acquisition-related fields.[23]

[22] 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.

[23] H.Rept. 114-270.

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 on military bases. Current DOD policies limit the carrying of government-issued firearms on military installations to personnel engaged in assigned duties.[24] 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	P.L. 114-92 (S. 1356)
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.	Sec. 526 requires DOD to establish a process that would allow senior leadership on military installations, reserve center, or other defense facility to authorize carry of an appropriate firearm for qualified servicemembers.

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 enacted bill (P.L. 114-92, S. 1356) would compel DOD to initiate a process that would give more flexibility to commanders of installations and other defense facilities to establish protocols for servicemembers to be authorized to carry appropriate firearms as a force protection measure.

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

[24] 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 5210.56, 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) killed or wounded in action by weapon fire while directly engaged in armed conflict against an enemy of the United States; (2) killed or wounded by friendly fire under certain circumstances; or (3) killed or wounded as a result of an intentional terrorist attack against the United States.[25] On April19, 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 in the Army Recruiting Battalion and in the Marine Corps Recruiting office. These servicemembers are ineligible for the Purple Heart based on the criteria listed above. Supporters of Section 583 of the initial House-passed bill (H.R. 1735) contend that the servicemembers killed in the Oklahoma City bombing were victims of terrorism and therefore eligible for the Purple Heart. Opponents maintain that these servicemembers were victims of domestic terrorism and do not qualify under current law.

House-Passed H.R. 1735	Senate-Passed H.R. 1735	P.L. 114-92 (S. 1356)
Sec. 583 would award the Purple Heart to members of the Armed Forces who were victims of the Oklahoma City, Oklahoma, bombing.	No provision	No provision

Discussion: Eligibility was expanded in the FY2015 NDAA (P.L. 113-291) to include servicemembers wounded and killed in 2009 during the terrorist attacks at Little Rock, AR and Fort Hood, TX. Authorities initially treated the 2009 shootings at Little Rock and Fort Hood 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 believed 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, Section 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." The provision in Section 583 of the initial House-passed bill (H.R. 1735) was not adopted, thus servicemembers who were victims of the Oklahoma City bombing will not be eligible for the Purple Heart under the enacted bill (P.L. 114-92, S. 1356).

Reference(s): 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 Barbara Salazar Torreon.

* Indicates topic was previously addressed in *FY2015 National Defense Authorization Act: Selected Military Personnel Issues.*

[25] 10 U.S.C. §§1129 and 1129a.

*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"[26] 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) with a provision in Section 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 U.S.C. §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	P.L. 114-92 (S. 1356)
Sec. 594 amends Sec. 2583(a) of title 10 U.S.C. 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 U.S.C. to give preference in the adoption of retired military working dogs to their former handlers.	Sec. 342. amends Sec. 2583(a) of title 10 U.S.C. 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 with preference first to A) former handlers; B) other persons capable of humanely caring for the animal; and C) law enforcement agencies.

Discussion: Section 342 of the enacted bill (P.L. 114-92, S. 1356) includes provisions from both Section 594 of the initial House-passed bill (H.R. 1735) and Section 352 of the initial Senate-passed bill (H.R. 1735) requiring DOD to transfer retiring MWDs located overseas to the United States and give adoption priority to former handlers. It does not alter, revise, or override existing military policy allowing law enforcement agencies to adopt military working dogs. Advocates of MWDs contend that the enacted bill (P.L. 114-92, S. 1356) language changing "may" to "shall" requires all military working dogs to be retired only after they are returned to the United States and will help facilitate domestic transfer of these dogs to those who qualify to adopt them. Opponents maintain that it will be costly since there are currently no appropriated funds designated for the transfer of retiring MWDs from abroad.

Reference(s): 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.

[26] 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."

*Defense Commissary System

Background: Over the past few years, Congress has been concerned with improving the Defense Commissary (DeCA) system but there have been no legislated changes. The President's FY2015 budget proposal included $1 billion in cuts to the Defense Commissary System over a three-year period, beginning with $200 million reduction in FY2015. However, commissary funding was fully restored in the FY2015 NDAA which added $100 million to the commissary budget to reverse the Administration's budget proposal. It also required a study of possible cost reductions. Similar to the FY2015 budget request, the President's FY2016 budget request proposed cutting $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.[27] 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	P.L. 114-92 (S. 1356)
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. Sec. 642 would prohibit replacement or consolidation of defense commissary and exchange systems pending submission of required report on defense commissary system.	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. Sec. 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. Sec, 653 directs the Comptroller General of the United States report on the Commissary Surcharge, Non-appropriated Fund, and Privately-Financed Major Construction Program. Sec, 1025 would require a report and assessment of potential costs and benefits of privatizing Department of Defense commissaries.	Sec. 651 would require the Secretary of Defense to submit a plan to Congress no later than March 1, 2016, to obtain budget-neutrality for the defense commissary system (DeCA) and the military exchange system. Sec. 652 directs the Comptroller General of the United States to issue a report on the Commissary Surcharge, Non-appropriated Fund, and Privately-Financed Major Construction Program.

Discussion: Sections 651 and 652 of the enacted bill (P.L. 114-92, S. 1356) include provisions similar to the initial Senate-passed version of H.R. 1735.

Section 651 of the enacted bill (P.L. 114-92, S. 1356) requires that the Secretary of Defense submit a report to the Committees on Armed Services of the House and Senate no later than

[27] 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.

March 1, 2016, with a plan to obtain budget-neutrality for the DeCA and the military exchange system. This comprehensive plan is to detail how to achieve budget-neutrality by meeting benchmarks set in the report such as customer service satisfaction, high product quality, and sustainment of discount savings to eligible patrons by October 1, 2018. Elements of this report shall include descriptions of any modifications to the commissary and exchange systems including privatization, in whole or in part; closure of any commissary in close proximity to other commissaries; an analysis of different pricing constructs to improve or enhance the commissary and exchange benefits; and the impact of any modification on Morale, Welfare and Recreation (MWR) quality-of-life programs. Also, as part of this report, the Defense Secretary shall consider Section 634 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (P.L. 113-291) as well as previous reports and studies. Section 634 of P.L. 113-291 required a review of management, food, and pricing options for DeCA including using variable pricing in commissary stores to reduce the expenditure of appropriated funds; implementing a program to make available more private label products in commissary stores; converting the defense commissary system to a non-appropriated fund instrumentality; and eliminating or at least reducing second-destination funding.

Section 652 of the enacted bill (P.L. 114-92, S. 1356) requires the Comptroller General of the United States to submit a report on the Commissary Surcharge, Non-appropriated Fund, and Privately-Financed Major Construction Program. The report will be submitted to the Committees on Armed Services of both chambers no later than 180 days after the date of the enactment of this Act.

Reference(s): 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.

*TRICARE Beneficiary Cost-Sharing

Background: TRICARE is a health care program serving uniformed servicemembers, 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). [28]

House-Passed H.R. 1735	Senate-Passed H.R. 1735	P.L. 114-92 (S. 1356)
No provision.	Sec. 702 would increase pharmacy copayments consistent with the Administration's proposal.	A revised section 702 with smaller pharmacy copayment increases was included. Discussed separately at page 32.

Discussion: Except for pharmaceutical copays in the initial Senate-passed bill (H.R. 1735), none of the remainder of the Administration's proposals was 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 versions of H.R. 1735. 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.[29]

The joint explanatory statement to accompany the enacted bill (P.L. 114-92, S. 1356) [30] further stated:

> We agree that comprehensive reform of the military health care system is essential and commit to working with the Department of Defense in fiscal year 2017 to begin reforming the military healthcare system. This reform must improve access, quality and the experience of care for all beneficiaries; maintain medical readiness of the military health professionals; and ensure the long-term viability and cost effectiveness of the military health care system. The current system has not kept pace with the best practices and latest innovations in the commercial healthcare market and will not meet the future needs of the DOD, the servicemembers, families, or retirees. In order to modernize and improve the military healthcare system, we agree that all elements of the current system must be

[28] Office of the Undersecretary of Defense (Comptroller) Chief Financial Officer, *United States Departmentof Defense Fiscal Year 2016 Budget Request Overview*, February 2015, pp. 6-12 to 6-15, http://comptroller.defense.gov/Portals/45/documents/defbudget/fy2016/fy2016_Budget_Request_Overview_Book.pdf.

[29] S.Rept. 114-49, p. 161.

[30] Joint Explanatory Statement on S. 1356 published in Congressional Record, November 5, 2015, pp. H7747-H8123.

> reevaluated, and that increases to fees and co-pays will be a necessary part of such a comprehensive reform effort.[31]

The Senate pharmacy provision is discussed separately on page 32.

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

[31] See pages 107-108 http://armedservices.house.gov/index.cfm?a=Files.Serve&File_id=E0B05DFB-B970-4D0C-92EA-26FD566B7E3B.

*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 servicemembers 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.[32]

House-Passed H.R. 1735	Senate-Passed H.R. 1735	P.L. 114-92 (S. 1356)
No provision.	Section 702 would specify TRICARE pharmaceutical co-pays for fiscal years 2016 through 2025, similar to the Administration proposal.	Section 702 provides for a one-time increase to pharmacy copayments. The copay for prescriptions filled at retail pharmacies is increased from $8 to $10 for generic drugs and from $20 to $24 for formulary brand name drugs. For prescriptions filled by mail order, the copay for formulary drugs increases from $16 to $20 and for non-formulary drugs from $46 to $49.

Discussion: Section 702 of the enacted bill (P.L. 114-92, S. 1356) provides for smaller pharmacy copayment increases than would have been provided under the initial Senate-passed bill (H.R. 1735). Section 702 of the enacted bill (P.L. 114-92, S. 1356) contains a one-time increase to pharmacy copayments. It increases the copay for prescriptions filled at retail pharmacies from $8 to $10 for generic drugs and from $20 to $24 for formulary brand name drugs. For prescriptions filled by mail order, the copay for formulary drugs is increased from $16 to $20 and for non-formulary drugs from $46 to $49.

CBO estimates that section 702 as enacted would reduce direct spending by about $1.5 billion over 10 years.[33]

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*.

[32] 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.

[33] https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/H.R.1735.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.[34] Last year, then-Secretary of Defense Hagel ordered a 90-day review of the military health system which resulted in an action plan.[35] 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	P.L. 114-92 (S. 1356)
No provision.	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. 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. 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. Section 733 would require an annual report on patient safety, quality of care, and access to care at military medical treatment facilities.	Similar to Senate section 711, section requires the Secretary of Defense to ensure that TRICARE Prime beneficiaries obtain health care appointments within health care access standards established by the Secretary, including through health care providers in the TRICARE preferred provider network. The section also requires the Secretary to publish health care access standards in the Federal Register and on a publicly accessible Internet website. No similar provision. The explanatory statement states "We strongly encourage the Department of Defense to demonstrate greater transparency of quality of care and health outcomes data by making such data available on the Hospital Compare website of the Department of Health and Human Services." Like Senate section 732, section 712 requires the Secretary of Defense to publish appropriate data on measures used to assess patient safety, quality of care, patient satisfaction, and health outcomes of each military medical treatment facility on a publicly available Internet website. Section 713 requires the Department of Defense to include data on patient safety, quality of care, and access to care at each military medical treatment facility in the annual report to Congress on TRICARE program effectiveness.

[34] See *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.

[35] http://www.defense.gov/home/features/2014/0614_healthreview/.

Discussion:

Sections 711 and 731 to 735 of the initial Senate-passed bill (H.R. 1735) would have required a variety of actions to increase the visibility of various health quality metrics by public access and through reports to Congress. CBO estimated that about $95 million would be required over the period 2016-2020 to satisfy these requirements.[36] By not including the provisions of the initial Senate Section 711, the provisions of the enacted bill (P.L. 114-92, S. 1356) would be less demanding and presumably less costly.

[36] 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."[37] 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 does not cover condoms and nonprescription spermicidal foams, gels or sprays.

House-Passed H.R. 1735	Senate-Passed H.R. 1735	P.L. 114-92 (S. 1356)
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. 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.	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 servicemembers.	Section 718 requires the Secretary of Defense to establish and disseminate clinical guidelines on contraception and contraception counseling as well as to make contraceptive counseling available to women members of the Armed Forces.

Discussion: Both the initial House and Senate-passed versions of the bill (H.R. 1735) included provisions that would have required DOD to take actions to increase access to contraception. The enacted bill (P.L. 114-92, S. 1356), similar to the initial Senate-passed bill (H.R. 1735), requires the Secretary of Defense to establish, within one year, clinical practice guidelines for DOD health care providers with respect to methods of contraception and counseling on methods of contraception. It also requires that all women members of the Armed Forces have access to comprehensive counseling on the full range of methods of contraception.

[37] 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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Acknowledgments

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