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CRS Report for Congress

The FY2008 National Defense Authorization Act: Selected Military Personnel Policy Issues

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David F. Burrelli, Coordinator
Specialist in National Defense
Foreign Affairs, Defense, and Trade Division

Richard A. Best, Jr., Charles A. Henning, and Lawrence Kapp
Specialists in National Defense
Foreign Affairs, Defense, and Trade Division

Congressional Research Service

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Summary

Military personnel issues typically generate significant interest from many Members of Congress and their staffs. Ongoing military operations in Iraq and Afghanistan in support of what the Bush Administration terms the Global War on Terror, along with the emerging operational role of the Reserve Components, have further heightened interest and support for a wide range of military personnel policies and issues.

CRS selected a number of issues addressed by Congress as it considered the FY2008 National Defense Authorization Act (H.R. 1585/S. 1547/H.R. 4986). In each case, a brief synopsis is provided that includes background information, a comparison of the House-passed, Senate-passed, and public law provisions, and a brief discussion of the issue. This update reflects the actions taken on the various House and Senate provisions in H.Rept 110-477, the conference report to accompany H.R. 1585, which was filed on December 6, 2007. Note: due to objections by the Administration to language that might have led to a freeze on Iraqi assets in U.S. banks contained in H.R. 1585, President Bush vetoed the bill. The bill was reconsidered by the House and Senate, and reissued (without the Iraqi language) as H.R. 4986. H.R. 4986 became P.L. 110-181.

Where appropriate, other 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. Note: some issues were addressed in last year's National Defense Authorization Act and discussed in CRS Report RL33571, *The FY2007 National Defense Authorization Act: Selected Military Personnel Policy Issues*, concerning that legislation. Those issues that were previously considered in CRS Report RL33571 are designated with a "*****" in the relevant section titles of this report.

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

Updates to this report are not anticipated.

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The FY2008 National Defense Authorization Act: Selected Military Personnel Policy Issues

Each year, the Senate and House Armed Services Committees report their respective versions of the National Defense Authorization Act (NDAA). They contain numerous provisions that affect military personnel, retirees and their family members. Provisions in one version are often not included in another, treated differently, or, in certain cases, they are identical. Following passage of each by the respective legislative body, a Conference Committee is typically convened to resolve the various differences between the House and Senate versions. If a Conference Committee reports its final version of the Authorization Act, the bill is returned to the House and Senate for their consideration. Upon final passage the act is sent to the President for approval.

In the course of a typical authorization cycle, congressional staffs receive many constituent requests for information on provisions contained in the annual NDAA. This report highlights those personnel-related issues that seem to generate the most intense constituent interest, and tracks their status in the FY2008 House and Senate versions of the NDAA. The House bill, H.R. 1585, was introduced on March 20, 2007, reported by the Committee on Armed Services on May 11, 2007 (H.Rept. 110-146), and passed by the House on May 17, 2007. The Senate bill, S. 1547, was introduced on June 5, 2007 and reported by the Committee on Armed Services on that day (S.Rept. 110-77), and reported by the Select Committee on Intelligence on June 29, 2007 (S.Rept. 110-125). On October 1, 2007, the Senate passed its version after striking everything after the enacting clause of H.R. 1585 and inserting the text of S. 1547 as amended by the Senate. The entries under "H.R. 1585 House-passed Version" and "H.R. 1585 Senate-passed Version" in the following pages are based on language in the House- and Senate-passed bills, respectively, unless otherwise indicated. On December 6, 2007, the conference report (H.Rept. 110-477) was filed. On December 12, 2007, the House agreed to the conference report (397-27) and two days later, the Senate agreed to the conference report (92-3). Objecting to language in the bill regarding a possible freeze on Iraqi assets held in U.S. banks, the President vetoed it on December 28, 2007. The bill was returned to the House and Senate, the language was removed, and the bill was renumbered: H.R. 4986. The House passed the bill on January 16, 2008 (396-46), the Senate passed the bill on January 22, 2008 (91-3), and signed into law on January 28, 2008 (P.L. 110-181,122 Stat. 3). The new version did not change any of the provisions discussed in this report.

Each presentation in this report offers the background on a given issue, compares House and Senate language on the issue, discusses the proposed and enacted language, identifies other relevant CRS products, and designates a CRS issue expert. Note: some issues were addressed in last year's National Defense

Authorization Act and discussed in CRS Report RL33571, *The FY2007 National Defense Authorization Act: Selected Military Personnel Policy Issues*, concerning that legislation. Those issues that were previously considered in CRS Report RL33571 are designated with a "*****" in the relevant section titles of this report.

Selected Family Matters

Background: The House and Senate Committees are concerned about the state of military families, particularly with regard to readiness and deployments.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
The House report contains language that requires the Secretary of Defense, in consultation with the Centers for Disease Control and Prevention, to conduct a study "of the level of risk of child abuse and neglect among military minor dependents that may result due to the increased operational tempo of service members."	No similar provision.	No language was included but such requests for reports are often honored by the Department of Defense.
Section 577 would protect child custody arrangements for parents who are members of the Armed Forces who are deployed in support of a contingency operation.	No similar provision.	The House language became Section 584 of the law with a clarifying amendment added by the Senate pertaining to the Servicemembers Civil Relief Act.
Section 578 limits simultaneous deployments to combat zones of dual-military couples who have minor dependents.	Section 1072 expresses the sense of the Congress that single parents and dual-service couples with dependents should develop a family care plan consistent with DOD Instruction 1342.19. Also, when such parents are required to deploy to certain areas, requests for deferments due to unforeseen circumstances should be evaluated rapidly and appropriate steps should be taken to ensure adequate care of the children.	The Senate language became Section 586 of the law with the adding of "an amendment that would require the Secretary of Defense to establish appropriate procedures to ensure that an adequate family care plan is in place for a member of the armed forces with minor dependents who is a single parent or whose spouse is also a member of the armed forces when the member may be deployed in an area for which imminent danger pay is authorized. The procedures should allow the member to request a deferment of deployment due to unforeseen circumstances, and the request should be considered and responded to promptly."

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
Section 580 calls for a study of feasibility of establishing a pilot program on family-to-family support for families of members of the National Guard and Reserves undergoing deployment. Section 581 requires a study regarding improving support services for the children of members of the National Guard and Reserve undergoing deployment. Section 1034 requires the Secretary of Defense to submit a report regarding the impact on military families of multiple deployments as a part of Operation Iraqi freedom and Operation Enduring Freedom.	Section 583 requires the Secretary of Defense to enhance and improve programs to provide family support for families of deployed servicemembers. Section 584 calls for the enhancement of support services for children of those undergoing deployment. Section 585 requires the Secretary of Defense to conduct a study on improving support services for the children of those undergoing deployment. Section 586 requires a study on the establishment of a pilot program on family-to-family support for those deployed.	The House language became Section 583 of the law with the Senate adding a provision "that would combine the House and Senate provisions to require a study to determine the most effective means to enhance and improve family support programs for families of the regular and reserve components of the armed forces before, during, and after deployment."
No similar provision.	Section 581 creates a DOD Military Family Readiness Council. Section 582 directs the Secretary of Defense to develop a policy and plans for the support of military family readiness.	These sections became Section 581 of the law with the House adding an amendment that would include the senior enlisted advisors of the Army, Navy, Marine Corps, and Air Force, or the spouse of a senior enlisted member from each service as a member of the Department of Defense Military Family Readiness Council.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
Section 515 would establish a DOD working group to identify and assess the reintegration needs of members of the reserve components returning from operational deployments overseas. Section 516 would require the creation of a national combat reintegration program, "Yellow Ribbon Reintegration Program," to provide National Guard families information, services, referral opportunities throughout the deployment cycle.	Section 683 calls for the creation of a "Yellow Ribbon Reintegration Program" to assist National Guard and reserve members and their families. Section 587 calls for a pilot program on family readiness and servicemember reintegration.	Section 582 incorporated the Senate language with a House amendment that would authorize the Secretary to create State Deployment Cycle Support Teams to administer the Yellow Ribbon Reintegration Program at the State level and would authorize outreach programs to educate service members and their families about the Yellow Ribbon Reintegration Program.

Discussion: These provisions show the growing concerns in Congress regarding the effects of military service on military families, particularly for those undergoing deployment.

Reference(s): None.

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

Cold War Victory Medal

Background: Congress authorized the Cold War Recognition Certificate ten 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.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
The House bill contains a provision (Section 556) that requires the Secretary of Defense to design and issue a Cold War Victory Medal for anyone who served honorably for a minimum of 180 days during the same period.	No similar provision.	No language was reported.

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

Reference(s): None.

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

Continuation of Authority To Assist Local Educational Agencies that Benefit Dependents of Members of the Armed Forces and Department of Defense Civilian Employees

Background: In 1950, Congress enacted P.L. 81-815 and P.L. 81-874. These laws (later made permanent) provide money from the Department of Defense to local school agencies for construction and educational activities in recognition of the impact of the dependents of Defense personnel who attend these schools. Local schools are supported, to a large extent, by the state tax base. In many cases, military personnel pay taxes to their home state which may not be the state where they are serving. Arguably, this assistance minimizes the impact these dependents have on schools near military facilities.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
The House provision (Section 562) authorizes $50 million to local educational agencies that have military dependents comprising at least 20 percent of the average daily attendance and also authorizes $15 million to local educational agencies that experience "significant increases or decreases in average daily attendance" of military dependent students due to changes in force structure, base closure and realignment, and from changes resulting from the relocation of personnel to other bases.	Section 561 authorizes $35 million to local educational agencies that benefit the children of members of the armed forces and DOD civilian employees, and $10 million in assistance to schools with enrollment changes due to base closures, force structure changes or force relocations.	Section 571 authorized $30.0 million for continuation of assistance to eligible local agencies impacted by enrollment of DOD military and civilian employee dependents, and $10.0 million for assistance to agencies with significant changes in enrollment of children due to base closures, force structure changes, or force relocations.
No similar provision.	Section 562 provides impact aid for military dependent children with severe disabilities.	Section 572 provided impact aid for military dependent children with severe disabilities.
No similar provision.	Section 563 provides aid to agencies impacted by non-DOD employees affected by the base realignment and closings.	Section 573 provided aid to agencies impacted by non-DOD employees affected by the base realignment and closings.
Section 561 provides authority for payment of private boarding school tuition for military dependents in overseas areas not served by DOD schools.	Section 564 provides authority for payment of private boarding school tuition for military dependents in overseas areas not served by DOD schools.	This language was accepted and expanded to include private boarding schools in the United States.
No similar provision.	Section 566 provides emergency assistance for local educational agencies that enroll military dependent children.	No language was reported.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
No similar provision.	Section 565 designates educational agencies that are "heavily impacted."	No language was reported.

Discussion: The law will augment impact aid laws in cases where there is a substantial military presence (and, in certain cases, civilian presence) and/or when military personnel policy or base structure changes bring about 'significant' changes in the average daily student attendance. This assists many states in adjusting to changed education needs pursuant to changes in military basing strategies, etc.

Reference(s): None.

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

Disregarding Periods of Confinement of Members in Determining Benefits for Dependents Who Are Victims of Abuse by the Member

Background: In the past, military members, including those eligible to retire, who were convicted of abuse or domestic violence could receive a sentence that included loss of military benefits. As a result, family members, especially those who suffered abuse, lost access to military benefits, including retired pay and health care, at a time when they were most in need of these benefits. On October 23, 1993, Congress enacted P.L. 102-484, which "authorizes various benefits for the spouses and former spouses of retirement-eligible members who lose eligibility for retired pay as a result of misconduct involving abuse of dependents. Generally, the spouses and former spouses are provided the same rights and benefits that they would have had if there had been no abuse and the member had retired under normal circumstances."[1]

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
Section 641 of the House bill states "[I]n determining ... whether a member of the armed forces became eligible to be retired from the armed forces on the basis of years of service so that a spouse or dependent child of the member is eligible to receive payment under this subsection, the Secretary concerned shall consider as creditable service by the member any periods of confinement served by the member before convening authority action on the record of trial related to the misconduct that resulted in the termination of the eligibility of the member to receive retired pay."	No similar provision.	No language was included.

Discussion: By example, a member of the armed services who is arrested and confined for abuse prior to reaching eligibility for retirement, may remain confined long enough to qualify for retirement except that such time in confinement is not creditable toward retirement. If it had been enacted, the House language would have allowed those confined to have the time in confinement prior to the actions of a convening authority terminating retirement eligibility, to count toward that retirement eligibility.

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

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[1] U.S. Department of Defense, Financial Management Regulation, Vol. 7B, Chap. 59, June 2001: 59-1.

Continuation/Modification of Authority for Members of the Armed Forces to Designate a Recipient for a Portion of the Death Gratuity

Background: The Death Gratuity is one of a number of benefits available to the survivors of military personnel. Its purpose is to provide an immediate cash payment to survivors until other benefits, if any, become available. Under law, the beneficiary(ies) are designated in order of eligibility with the surviving spouse first, followed by the children. If so designated by a service member, others can receive this benefit including parents or siblings. Recently, it was reported that a service member, a single parent, died while on active duty and that her financially struggling parents who had custody of the surviving child were unable to access this benefit. P.L. 110-28 (May 25, 2007) contained language that allows a covered service member to designate up to 50 percent of the death gratuity (in 10% increments) to a person other than the recipient under law. This authority ends September 30, 2007.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
Section 642 of the House bill would make this designation authority permanent by removing the Sept. 30, 2007 termination date.	Section 651 of the Senate bill modifies the law by striking the existing list of beneficiaries and replacing it with a new list by the order of eligible beneficiaries (subject to certain qualifications): 1) any individual designated in writing, 2) the surviving spouse, 3) children, 4) parents, 5) an executor or administrator of the estate, and, 6) other next of kin. The Senate also included report language addressing the need for pre-deployment counseling on survivor benefits and directing the Secretary of Defense to review such counseling.	Section 645 stated "The House recedes with an amendment that would make the provision effective no later than July 1, 2008; provide for notification of the spouse if an election were made under this authority that would exclude a current spouse from any portion of the death gratuity benefit; provide for partial designations in 10 percent increments; and provide [death gratuity elections made)] ... before the enactment of this provision, or before enactment of the amendments ... Public Law 110-28, would remain lawful and effectual."

Discussion: The law allowed service members to designate a beneficiary but also created a specific list of other such beneficiaries if the member did not designate a beneficiary in writing.

Reference(s): CRS Report RL32769, *Military Death Benefits: Status and Proposals*, David F. Burrelli and Jennifer R. Corwell.

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

Recoupment of Annuity Amounts Previously Paid, but Subject to Offset for Dependency and Indemnity Compensation

Background: The Survivor Benefit Plan (SBP) provides an annuity for the survivors of those who die while serving in the Armed Forces and those who have retired from the Armed Forces. For those receiving retired pay, a portion of that pay is withheld for those participating in the SBP. For the surviving spouses of those who die of injuries or illness suffered in the line of duty, the Department of Veterans Affairs provides a monetary benefit known as Dependency and Indemnity Compensation or DIC. If a surviving spouse or former spouse is eligible to receive both benefits, the SBP benefit is offset on a dollar-for-dollar basis. If the DIC is paid to an SBP-eligible surviving spouse or former spouse, a percentage (or possibly all) of the deceased retiree's original contributions to the SBP will be returned to the surviving spouse or former spouse. If the SBP is offset by DIC, that proportion of deductions from the deceased retiree's retired pay which financed the offset portion of the SBP will be refunded. SBP payments can be restored, if the beneficiary becomes ineligible for DIC and remains eligible for SBP, provided that the refunded SBP payments are returned.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
The House provision (Section 643) requires that any Survivor Benefit Plan (SBP) payments previously paid to a surviving spouse or former spouse that are subject to the mandatory offset associated with payments of Dependency and Indemnity Compensation by the Department of Veterans Affairs be recouped only to the extent that the amount exceeds any SBP premiums to be refunded by the Department of Defense. Further, it requires four actions be taken when notifying an individual of recoupment: 1) A single notice of the amount to be recouped, 2) a written explanation of the statutory requirements for this recoupment, 3) a detailed accounting of the determination of the amount to be recouped, and, 4) contact information for a person who can provide information and answer questions concerning the recoupment actions.	No similar provision.	No language was included.

Discussion: Military widow(er)s are often confused or uninformed when one benefit offsets the other resulting in a return of payments made and any subsequent recoupments that may result. Often, these widow(er)s feel that money has been unfairly taken away from them. It was expected that the House provision would remove any uncertainty as to what happens during the recoupment process when an over payment is made. This language was not included in the law.

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

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

*Survivor Benefit Plan Annuity Offset for Dependency and Indemnity Compensation

Background: As explained on the previous page, a surviving spouse or former spouse who is eligible to receive both a Survivor Benefit Plan (SBP) annuity and benefits under Dependency and Indemnity Compensation (DIC), will have the SBP benefit reduced or offset on a dollar-for-dollar basis by DIC.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
The House provision (Section 644) authorizes a monthly survivor indemnity allowance "equal to $40 or the same amount of the SBP annuity subject to the DIC offset should it be a lesser amount." These payments become effective October 1, 2008 and terminate effective March 1, 2016.	Section 658 would eliminate the offset of the SBP annuity by the amount of DIC.	The report language limited the survivor indemnity allowance to survivors of service members who were entitled to retired pay, or would be entitled to reserve component retired pay but for the fact they were not yet 60 years of age, would increase the monthly allowance for FY2009 to $50, and increases the monthly allowance by $10 every year through FY2013.

Discussion: Under the law, SBP-eligible surviving spouses or former spouses who are also eligible to receive DIC, receive an additional payment of up to $50 per month and slightly more in subsequent years.

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

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

Annuities for Guardians and Caretakers of Dependent Children Under Survivor Benefit Plan

Background: Under the Survivor Benefit Plan (SBP) military service members and participating retirees can, upon their death, provide an annuity to certain survivors, including spouses, former spouses, and/or dependent children. In certain cases, a member may wish to designate a dependent child as the beneficiary, however the child may be too young to be financially responsible. This is also true if the eligible dependent child is mentally incapacitated.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
No similar provision.	The Senate bill contains a provision (Section 652) that creates a new category of beneficiary under SBP: "Guardian or Caretaker of Dependent Children." According to the Senate report: "A person who is not married and has one or more dependent children upon becoming eligible to participate in the Plan may elect to provide an annuity under the Plan to a natural person (other than a natural person with an insurable interest in the person ... or a former spouse) who acts as a guardian or caretaker to such child or children."	No language was reported.

Discussion: Under the Senate language, a guardian or caretaker of dependents could be designated as a beneficiary. This could be helpful in those instances where the dependent child(ren) is/are very young or mentally incapacitated. This language was not included in the law.

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

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

*Effective Date of "Paid-Up" Coverage under the Military Survivor Benefit Plan (SBP)

Background: The military Survivor Benefit Plan (SBP) provides annuities to the survivors of military personnel and retirees. The SBP is funded, in part, via deductions in the retired pay of participants. In 1999, Congress reduced the cost of the SBP to certain retirees by enacting the so-called "paid-up" provision. Under this language, reduction in retired pay made to cover the retiree's share cease when two conditions are met: (1) the retiree reaches age 70; and (2) the retiree has participated in the SBP for 360 months. As enacted, these provisions become effective October 1, 2008 (P.L. 105-261, 112 Stat. 2045, October 17, 1998). Language was included in the Senate version of the National Defense Authorization Act for both Fiscal Year 2006 and 2007 to move the effective date of this provision to October 1, 2005, and October 1, 2006, respectively. This language was dropped by the Conference Committees (U.S. Congress, Conference Committee, National Defense Authorization Act for Fiscal Year 2006, H.Rept. 109-360, 109th Cong., 1st Sess. H.R. 1815, December 18, 2005 and U.S. Congress, Conference Committee, John Warner National Defense Authorization Act for Fiscal Year 2007, H.Rept. 109-702, 109th Cong., 2nd Sess. H.R. 5122, September 29, 2006).

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
No similar provision.	Section 659 would move the effective date of the "paid-up" provision from October 1, 2008 to October 1, 2007.	No language was reported.

Discussion: The SBP was created on September 21, 1972. It is possible for military retirees who entered the service prior to 1978 to both reach the age of 70 and participate in the SBP for 360 months but be prevented from benefitting under the "paid-up" provision because of the October 1, 2008, effective date.

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

CRS Point of Contact (POC): David F. Burrelli, 7-8033.

Army/Marine Corps End Strength

Background: Even though engaged in combat operations in Afghanistan since 2001 and in Iraq since 2003, the Bush Administration and the Department of Defense (DOD) have, until recently, resisted congressional calls to permanently increase the end strength of the Army and Marine Corps (although they did accede to temporary increases). Even the Quadrennial Defense Review (QDR) released on February 6, 2006, recommended an Army end strength of 482,400 and a Marine Corps end strength of 175,000. On January 19, 2007, DOD announced that it would seek approval to increase permanent active Army end strength by 65,000 to 547,400 and permanent active Marine Corps end strength by 27,000 to 202,000, both by FY2012. In response to the request for increased end strength, the respective committees reported the following:

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
Section 401 authorizes an FY2008 end strength of 525,400 for the Army and 189,000 for the Marine Corps.	Section 401 authorizes an FY2008 end strength of 525,400 for the Army and 189,000 for the Marine Corps.	Section 401 authorized a FY2008 end strength of 525,400 for the Army and 189,000 for the Marine Corps.
Section 402 establishes a new minimum strength levels of 525,400 for the Army and 189,000 for the Marine Corps.	No similar provision.	Section 402 established a new minimum strength level of 525,400 for the Army and 189,000 for the Marine Corps.
Section 403 authorizes additional increases in FY2009-FY2010 of 22,000 for the Army (to 547,400) and 13,000 for the Marine Corps (to 202,000).	No similar provision.	Section 403 authorized additional increases in FY2009-FY2010 of 22,000 for the Army (to 547,400) and 13,000 for the Marine Corps (to 202,000).

Discussion: Increasing the end strength will require increased annual recruiting and retention goals. It is reasonable to project an annual recruiting goal of 85,000-87,000 for the active Army and 36,000-38,000 for the active Marine Corps. Based on recent experience, these goals may be difficult to achieve.

Reference(s): CRS Report RL31334, *Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom: Questions and Answers About U.S. Military Personnel, Compensation, and Force Structure*, by Lawrence Kapp and Charles Henning.

CRS Point of Contact (POC): Charles Henning at x7-8866.

Hardship Duty Pay

Background: Hardship Duty Pay (HDP) is compensation for the exceptional demands of certain duty, including unusually demanding mission assignments or service in areas with extreme climates or austere facilities. The maximum authorized amount for HDP was recently increased by Congress from $300 to $750 per month (P.L. 109-163, Section 627).

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
The House provision (Section 624) increases the maximum amount of Hardship Duty Pay from $750 to $1500 per month.	The Senate provision (Section 617) also increases the maximum monthly amount of Hardship Duty Pay to $1500, and authorizes payment of a lump sum in advance or a monthly rate.	Section 617 increased the maximum amount of Hardship Duty Pay to $1500 a month and authorizes payment of a lump sum in advance or a monthly rate.

Discussion: While the maximum authorized rate for HDP is increased to $1500 per month by this provision, the actual rate paid will be determined by the Secretary of Defense. DOD has currently set HDP at $100 per month for both Iraq and Afghanistan.

Reference(s): CRS Report RL31334, *Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom: Questions and Answers About U.S. Military Personnel, Compensation and Force Structure*, by Lawrence Kapp and Charles Henning.

CRS Point of Contact (POC): Charles Henning at x7-8866.

*Modifying Reserve Retirement Authorities

Background: Active duty military personnel are eligible for full retirement benefits after 20 years of active duty, regardless of their age. Reservists are also eligible to retire after 20 years of qualifying service but do not receive retired pay or access to retiree health benefits until age 60. In light of the heavy use of the Reserve Component in recent years, a number of legislative proposals has been introduced to lower the age at which reservists receive retired pay and military retiree health care benefits.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
No similar provision.	Section 655 of the Senate bill would reduce the age for receipt of retired pay for members of the Ready Reserve by three months for each aggregate of 90 days of specified duty performed in any fiscal year since September 11, 2001. Specified duty includes active duty under any provision of law referred to in 10 USC 101(a)(13)(B), active duty under 10 USC 12301(d); or active service under 32 USC 502(f) if responding to a national emergency declared by the President or supported by federal funds. The retired pay eligibility age could not be reduced below age 50, and eligibility for retiree health care benefits would remain at age 60.	Section 648 of the law was nearly identical to the Senate provision, but only applies to duty performed in a fiscal year after the date of enactment of the National Defense Authorization Act for FY2008.

Discussion: The law is narrower in scope than some other legislative proposals in the 110th Congress, such as those that would lower the age for receipt of retired pay and retiree health care benefits to 55 for all reservists. The law reduced the age at which certain reservists – those who, after the date of enactment of this bill, serve on active duty for the specified period under the specified activation authorities – can draw retired pay. However, the retirement age cannot be reduced below age 50. Additionally, it did not reduce the age at which they can receive retiree medical benefits; that would remain at age 60.

Reference(s): CRS Report RL30802, *Reserve Component Personnel Issues, Questions and Answers*, by Lawrence Kapp.

CRS Point of Contact (POC): Lawrence Kapp at x7-7609 or Charles Henning at x7-8866.

POW/MIA Operations

Background: The Department of Defense (DOD) POW/MIA organization consists of the DOD Prisoner of War/Missing Personnel Office (DPMO) and two field activities-the Joint POW/MIA Accounting Command (JPAC) and its subordinate Central Identification Laboratory-Hawaii (CIL-HI) and the Air Force's Life Sciences Equipment Laboratory. Over the past several years, Congress has been concerned about the level of DOD resources being allocated to POW/MIA operations, both personnel and funding. The FY2007 John Warner National Defense Authorization Act (P.L. 109-364) required DOD to submit a five-year overview of the funding required and requested. The FY2008 President's Budget would support 91 percent, or $8.0 million less than, the total funding required as determined by the overview for FY2008.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
The House report recommends fully supporting POW/MIA efforts by increasing the amounts allocated by: +$0.2 M for DPMO +$7.5M for JPAC +$0.3M for Life Sciences Laboratory.	No similar provision.	No language was reported.

Discussion: If supported by appropriations, these increases would fund FY2008 POW/MIA operations at 100% of the requirement as determined by the overview mandated by P.L. 109-364. This is report language and is not contained in the law itself.

Reference(s): CRS Report RL33452, *POWs and MIAs: Status and Accounting Issues*, by Charles A. Henning.

CRS Point of Contact (POC): Charles Henning at x7-8866.

*Military Pay Raise

Background: Ongoing military operations in Iraq and Afghanistan, combined with end strength increases and recruiting challenges, continue to highlight the military pay issue. Title 37 U.S.C. 1009 provides a permanent formula for annual military pay raises that indexes the raise to the annual increase in the Economic Cost Index (ECI). The FY2008 President's Budget request for a 3.0 percent military pay raise was consistent with this formula. Congress, in FY2004, FY2005 and FY2006 approved the raise as the ECI increase plus 0.5 percent.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
The House provision, in Section 601, supports a 3.5 percent (0.5 percent above the President's Budget) across-the-board pay raise that would be effective January 1, 2008.	The Senate, in Section 601, supports a 3.5 percent across-the-board pay raise effective January 1, 2008.	Section 601 authorized a 3.5 percent across-the-board pay raise retroactive to January 1, 2008.
In Section 606, the House also supports a guaranteed pay raise of 0.5 percent above the ECI for FY2009 through FY2012.	No similar provision.	No language was reported.

Discussion: A military pay raise larger than the permanent formula is not uncommon. Mid-year, targeted pay raises (targeted at specific grades) have also been authorized over the past several years. This year's legislation includes no mention of targeted pay raises.

Reference(s): CRS Report RL33446, *Military Pay and Benefits: Key Questions and Answers*, by Charles Henning.

CRS Point of Contact (POC): Charles Henning at x7-8866.

*Concurrent Receipt

Background: Since the enactment of Concurrent Receipt legislation in FY2003, the Combat-Related Special Compensation (CRSC) benefit has been available to all military retirees with 20 or more years of active duty who meet other eligibility criteria. Excluded from eligibility have been reservists and those who were medically retired under Chapter 61 of Title 10 prior to completing 20 years of service. Those who are rated by the VA as 100% Unemployable were originally scheduled to become eligible for Concurrent Receipt in 2014. The FY2006 NDAA modified this eligibility date to be October 1, 2009.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
The House provision in Section 645 would expand CRSC eligibility to include military retirees (to include Chapter 61) with a minimum of 15 years of creditable service and a disability rated at least 60%.	The Senate, in Section 653, would expand CRSC eligibility to include all service members eligible for retired pay, to include those retired under Chapter 61 and almost all reserve retirees, effective January 1, 2008. It excludes reservists who retire under a special provision (10 USC 12731b), which allows reservists with a physical disability not incurred in the line of duty to retire with between 15 and 19 creditable years of reserve service.	Section 641 expanded CRSC eligibility to include all service members eligible for retired pay, to include those retired under Chapter 61 and most reserve retirees, other than those retired under 10 USC 12731b, effective January 1, 2008.
No similar provision.	Section 660 would grant Concurrent Receipt eligibility to 100% Unemployables retroactive to December 31, 2004.	Section 642 expanded Concurrent Receipt to include those who are rated as 100% unemployable by the Department of Veterans' Affairs, retroactive to December 31, 2004 and payable on October 1, 2008.

Discussion: The law opened CRSC eligibility to some previously excluded.

Reference(s): CRS Report RL33449, *Military Retirement, Concurrent Receipt, and Related Major Legislative Issues*, by Charles Henning.

CRS Point of Contact (POC): Charles Henning at x7-8866.

Moving Reserve "GI Bill" Educational Benefits from Title 10 to Title 38

Background: The original "GI Bill" educational benefit was enacted in 1944 as part of a legislative act designed to help the millions of World War II servicemembers readjust to civilian life upon demobilization. This was a "post-service" benefit for veterans. In subsequent versions of the "GI Bill," the educational benefit became not just a veterans' readjustment program, but a military recruiting incentive as well. In 1984, when Congress established the version of the GI Bill which came to be known as the "Montgomery GI Bill" (MGIB), the basic benefit for active duty personnel (MGIB-AD) remained codified in Title 38 (Veterans' Benefits). A new benefit was also established for members of the Selected Reserve (MGIB-SR), but this was placed in Title 10 (Armed Forces) as its purpose to "encourage membership in units of the Selected Reserve" was directly related to recruiting and retention, not veterans' readjustment. Over time, the benefit for those eligible for MGIB-AD increased more rapidly than for those eligible for MGIB-SR, as the programs were administered and overseen by different executive branch agencies and congressional committees. In 2004, Congress enacted a new educational benefit called the Reserve Educational Assistance Program (REAP) for reservists who had served at least 90 days on active duty in support of a contingency operation. This program was placed in Title 10, although the benefit level was statutorily linked to the MGIB-AD basic benefit in Title 38.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
Section 525 would recodify chapters 1606 (MGIB-SR) and 1607 (REAP) of title 10 USC, and Chapter 33 of Title 38.	No similar provision.	Section 535 required the Secretary of Defense, in cooperation with the Secretary of Veterans' Affairs, to submit a report to the congressional defense and veterans' affairs committees on the feasibility and merits of transferring the administration of Chapter 1606 and 1607 educational programs from DoD to the Department of Veterans' Affairs. Several other entities must also review the report, and the Comptroller General must submit an assessment of the report to the above mentioned committees.

Discussion: Transferring the Montgomery GI Bill – Selected Reserve statutory authority from Title 10 to Title 38 has been advocated by a number of military advocacy groups as a way of ensuring the Reserve GI Bill payment rates maintain proportional parity with the Active Duty GI Bill.

Reference(s): CRS Report RL33281, *Montgomery GI Bill Education Benefits: Analysis of College Prices and Federal Student Aid Under the Higher Education Act*, by Charmaine Mercer and Rebecca Skinner.

CRS Point of Contact (POC): Lawrence Kapp at x7-7609.

*Role of National Guard Bureau and National Guard Bureau Chief

Background: There have been long-standing tensions between the senior leadership of the military services and their respective reserve components regarding policy and resource allocation decisions. This conflict has resurfaced in the past few years with respect to several decisions which impacted the Army and Air National Guard. Additionally, the devastation caused by Hurricane Katrina generated great interest in revamping the way in which the federal and state governments prepare for and respond to disasters or other catastrophic events. Modifying the role which the National Guard might play in future events has been an area of particular interest, given its unique status as both a state and federal force. The FY2007 John Warner National Defense Authorization Act (P.L. 109-364, Section 529) directed the Commission on the National Guard and Reserve (CNGR) to review a number of proposed changes to the role of the National Guard Bureau (NGB) and the National Guard Bureau Chief and to report its recommendations on these proposals to the House and Senate Armed Services Committees. The CNGR submitted its "Second Report to Congress"on March 1, 2007.

Note: *The Senate-passed version contains relevant provisions in both Title V and Title XVIII of the bill. The provisions in Title V were included in the bill reported by the Senate Armed Services Committee, while the provisions in Title XVIII were the result of an amendment on the Senate floor.*

H.R. 1585 House-passed Version	**H.R. 1585 Senate-passed Version**	**P.L. 110-181**
Section 1611(a) specifies that -- in addition to the Chief's current duties as principal adviser to the Secretaries and Chiefs of Staff of the Army and Air Force on National Guard matters-- the Chief is also the principal adviser to the Secretary of Defense, through the Chairman of the Joint Chiefs of Staff, on such matters.	Section 533(d) specifies that -- in addition to the Chief's current duties as principal advisor to the Secretaries and Chiefs of Staff of the Army and Air Force on National Guard matters -- the Chief is also an advisor to the Secretary of Defense, through the Chairman of the Joint Chiefs of Staff, "on matters involving non-federalized National Guard forces and other matters as determined by the Secretary of Defense." Section 1802(b) specifies that -- in addition to the Chief's current duties as principal adviser to the Secretaries and Chiefs of Staff of the Army and Air Force on National Guard matters-- the Chief is also the principal adviser to the Secretary of Defense and to the Chairman of the Joint Chiefs of Staff, on such matters.	Section 1811(d) specified that – in addition to the Chief's current duties as principal advisor to the Secretaries and Chiefs of Staff of the Army and Air Force on National Guard matters – the Chief is 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."

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
Section 1611(b) would make the Chief an adviser on National Guard matters to the commander of the combatant command whose geographic responsibility includes the United States (i.e. the Commander of U.S. Northern Command) and to the Secretary of Homeland Security.	No similar provision.	No language was reported.
Section 1611(c) would change the grade of the Chief of the National Guard Bureau from Lieutenant General (O-9) to General (O-10).	Both Section 533(b) and Section 1802(b)(2) would change the grade of the Chief of the National Guard Bureau from Lieutenant General (O-9) to General (O-10).	Section 1811(b) changed the grade of the Chief of the National Guard Bureau from Lieutenant General (O-9) to General (O-10).
Section 1611(d) would change the way the Chief of the NGB is recommended for appointment. It would leave intact the current procedure for recommending candidates for this position, but add a new requirement for the Secretary of Defense to set up a process for identifying the "best qualified officer or officers whom the Secretary of Defense will recommend for consideration by the President for appointment as Chief of the National Guard Bureau." A key component of this selection process would be the requirement to "incorporate the requirements of Section 601(d)" of Title 10 (See discussion below).	Section 533(a) would add new requirements for an officer to be recommended for appointment as Chief of the National Guard Bureau, including a recommendation by the Secretary of the Army or Air Force; a determination by the Chairman of the Joint Chiefs of Staff that the officer has "significant joint duty experience"; a determination by the Secretary of Defense that the officer's assignments and experiences provide a detailed knowledge of the status and capabilities of National Guard forces and missions; that the officer possesses a level of operational experience, professional military education, and expertise in national defense and homeland defense commensurate with the advisory role of the position; and that the officer possesses such other qualifications as the Secretary of Defense prescribes.	Section 1811(a) was virtually identical to the Senate provision.
Section 1611(e) would repeal the prohibition in 10 USC 10502(b) on officers 64 years of	Section 533(c) is identical to House provision.	Section 1811(c) repealed the prohibition in 10 USC 10502(b) on officers 64 years of age or

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
age or older from holding the position of Chief, NGB.		older from holding the position of Chief, NGB.
Section 1625 amends 10 USC 14511 – which requires the mandatory separation of reserve officers in the grade of major general or rear admiral (O-8) or higher to retire at age 64 – to allow the Secretary of Defense to defer such separation for reserve officers in the rank of lieutenant general/vice admiral (O-9) or general/admiral (O-10) to the age of 66 and to allow the President to make a similar deferral to age 68.	Section 533(e) amends 10 USC 14512 - which requires the mandatory separation of officers holding certain offices, including the Chief of the NGB, at age 66 - to allow the President to defer the retirement of the Chief of the NGB to age 68.	Section 1825 deleted the reference to the Chief of the NGB in 10 USC 14512, and amended 10 USC 14511 to allow the Secretary of Defense to defer separation for reserve officers in the rank of lieutenant general/vice admiral (O-9) or general/admiral (O-10) up to age 66 and allowed the President to make a similar deferral up to age 68.
Section 1611(f) would require the Secretary of Defense to recommend to the President the best qualified officer or officers to serve as the Chief, determined under the new process set up by the amendment contained in Section 1611(d), within 120 days of enactment.	No similar provision.	No language was reported.
Section 1612(a) would change the National Guard Bureau from a "joint bureau of the Department of the Army and the Department of the Air Force" to a "joint activity of the Department of Defense."	Section 1802(a)(1) is identical to the House provision.	Section 1812(a) changed the National Guard Bureau from a "joint bureau of the Department of the Army and the Department of the Air Force" to a "joint activity of the Department of Defense."
No similar provision	Section 1802(a)(2) would change the purpose of the National Guard Bureau from serving as a channel of communications on National Guard matters between the Departments of the Army and Air Force and the States, to channel of communications on National Guard matters among (1) the Secretary of Defense, the Joint Chiefs of Staff, and the commanders of the combatant commands of the United States, (2) the Departments of the Army and Air Force, and (3) the States.	No language was reported.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
Section 1613(a) would assign a new function to the NGB: facilitating and coordinating the use of National Guard personnel and resources for certain types of operations – "operations conducted under title 32, or in support of State missions" – with other federal agencies, the Adjutants General of the States, U.S. Joint Forces Command, and the combatant command whose geographic responsibility includes the United States (i.e. U.S. Northern Command).	Section 1802(c)(1) would assign a new function to the NGB: facilitating and coordinating the use of National Guard personnel and resources for certain types of operations – "contingency operations, military operations other than war, natural disasters, support of civil authorities, and other circumstances"– with other federal agencies and the States.	Section 1813(a) assigned a new function to the NGB: Assisting the Secretary of Defense in facilitating and coordinating the use of National Guard personnel and resources for certain types of operations – "operations conducted under title 32, or in support of State missions" – with other federal agencies, the Adjutants General of the States, U.S. Joint Forces Command, and the combatant command whose geographic responsibility includes the United States (i.e., U.S. Northern Command).
Section 1613(b) would transfer authority for prescribing the NGB charter from the Secretaries of the Army and Air Force to the Secretary of Defense, who would be required to develop the charter in consultation with the Secretaries of the Army and Air Force, and the Chairman of the Joint Chiefs of Staff.	Section 532(a)(1) is virtually identical to the House provision.	Section 1813(b) transferred authority for prescribing the NGB charter from the Secretaries of the Army and Air Force to the Secretary of Defense, who would be required to develop the charter in consultation with the Secretaries of the Army and Air Force, and the Chairman of the Joint Chiefs of Staff. Section 1813(a) also specified that the NGB charter reflect "the role of the National Guard Bureau in support of the Secretary of the Army and the Secretary of the Air Force."

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
Section 1614 requires that the Secretary of Defense, shall annually prepare and submit to the Congress a plan for "coordinating the use of the National Guard and members of the Armed Forces on active duty when responding to natural disasters, acts of terrorism, and other man-made disasters identified...in subsection (e)." The "other man-made disasters" identified include different types of nuclear, biological, chemical, explosive, and natural incidents.	Section 1806 is nearly identical to the House provision, with the exception that the response plan – in addition to addressing the specified types of nuclear, biological, chemical, explosive, and natural incidents – shall also address "any other hazards identified in a national planning scenario developed by the Homeland Security Council."	Section 1814 required the Secretary of Defense to prepare and submit a plan to Congress for "coordinating the use of the National Guard and members of the Armed Forces on active duty when responding to natural disasters, acts of terrorism, and other man-made disasters identified...in subsection (e)." The other "other man-made disasters" identified include the same ones listed in the House and Senate passed versions, along with "any other hazards identified in a national planning scenario developed by the Homeland Security Council." This plan must be submitted no later than June 1, 2008, with an update no later than June 1, 2010.
The plan must be developed in consultation with the commander of U.S. Northern Command and the Chief of the National Guard Bureau; and the Chief of the National Guard Bureau must assist the Secretary of Defense by gathering relevant information from governors, adjutants general, and other state authorities.	Same as House language.	The plan must be developed in consultation with the Secretary of Homeland Security, the Chairman of the Joint Chiefs of Staff, the commander of U.S. Northern Command, the Chief of the National Guard Bureau; and the Chief of the National Guard Bureau must assist the Secretary of Defense by gathering relevant information from governors, adjutants general, and other state authorities.
The plan must set forth two versions of response: one using only members of the National Guard and one using both National Guard and active duty personnel.	Same as House language.	The plan must set forth two versions of response as indicated in the House and Senate language.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
The plan shall cover the following matters: coordination protocols, operational procedures, command structures, and lines of communications, as well as identifying training and equipment needed for both National Guard and active duty personnel to provide military assistance to civil authorities.	Same as House language.	The plan shall cover the matters set out in the House and Senate language.
No similar provision.	Section 1802(b)(3) would require the Chief of the National Guard Bureau to submit an annual report to Congress on the requirements of the States and Territories with respect to military assistance to civil authorities which the Chief has validated, along with information on whether or not funding will be requested for these requirements in the next budget.	No language was reported.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
Section 1615(a) would require the Secretary of Defense to determine "military unique capabilities needed to be provided by the Department of Defense to support civil authorities in an incident of national significance or a catastrophic incident."	Section 1802(c)(2) would require the Chief of the National Guard Bureau to "identify gaps between Federal and State capabilities to prepare for and respond to emergencies" and "to make recommendations to the Secretary of Defense on programs and activities of the National Guard for military assistance to civil authorities to address such gaps." To meet this new requirement, the Chief would have the new powers – in the realm of military assistance to civil authorities -- including validating requirements, developing doctrine and training requirements, acquiring equipment and supplies, assisting the Secretary of Defense in budget preparation, and administering funds. These activities are to be carried out "in coordination with the Adjutants General of the States" and "in consultation with the Secretary of the Army and the Secretary of the Air Force."	Sections 1815(a) was nearly identical to the House language in Section 1615(a) except that it required the Secretary of Defense to consult with the Secretary of Homeland Security in determining the "military unique capabilities needed to be provided by the Department of Defense to support civil authorities in an incident of national significance or a catastrophic incident."
Section 1615(b) would require the Secretary of Defense, in coordination with the Secretaries of the Military Departments and the Chairman of the Joint Chiefs of Staff, to develop and implement a plan for funding these capabilities, and certain other capabilities related to homeland defense, domestic emergency response, and providing military support to civil authorities.		Section 1815 (b) was identical to the House language in Section 1615(b).
Section 1614(d) requires the Secretary of Defense, acting through the Chairman of the Joint Chiefs of Staff, to ensure "appropriate assignment of responsibilities, coordination of efforts, and prioritization of renouncing [resourcing] by the appropriate combatant commands, the military departments, and the National Guard Bureau."		No language similar to Section 1614(d) of the House bill was reported.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
Section 1614(c) requires the Secretary of Defense to include a request for funds sufficient to carry out the plan required by Section 1614(b) in the budget materials submitted for each fiscal year.	Section 1802(c)(3) requires that the budget justification documentation submitted to the Congress by the President each fiscal year specify separate amounts "for training and equipment for the National Guard for purposes of military assistance to civil authorities and for other domestic operations during such fiscal year."	Section 1815(c) required the Secretary of Defense to include a request for funds sufficient to carry out the plan required by Section 1815 (b) in the budget materials submitted for each fiscal year.
Section 1615(f) specifies that the written policy guidance which the Secretary of Defense provides to the Chairman of the Joint Chiefs of Staff for the preparation and review of contingency plans (required by 10 USC 113(g)(2)), must include "plans for providing support to civil authorities in an incident of national significance or a catastrophic incident, for homeland defense, and for military support to civil authorities."	No similar provision.	Section 1815(e) was identical to the House provision.

Discussion: A number of the provisions in the law track closely with recommendations contained in the CNGR's Second Report to Congress, including the following:

- **4 Star Rank for NGB Chief.** The law (Section 1811(b)) increased the rank of the Chief of the National Guard Bureau from lieutenant general to general, as advocated by CNGR Recommendation 13.
- **NGB Charter.** The law (Section 1813(b)) transferred authority for prescribing the NGB charter to the Secretary of Defense, consistent with CNGR Recommendation 12.
- **NGB a joint activity of DOD.** The law (Section 1812(a)) established the NGB as a joint activity of the Department of Defense, consistent with CNGR Recommendation 9.
- **NGB Chief Advisory Role.** Section 1811(c) of the law corresponded closely with the first part of CNGR Recommendation 10.
- **New Function of the NGB.** Section 1813(a) of the law was consistent with CNGR Recommendation 11.

In other areas, the law differs somewhat from the CNGR recommendations:

- **Determining Requirements and Budgeting for Domestic Response Capabilities.** Section 1815 of the law was similar in certain respects to the

recommendations provided by the CNGR, but differed in other areas. A description of these similarities and differences is beyond the scope of this report. See CNGR recommendations 1, 3, 4, and 5.

- **Planning for Disasters and Terrorism.** The requirement for a plan to respond to natural disasters or terrorist attacks contained in Section 1814 of the law was different than what was recommended by the CNGR. CNGR Recommendation 19 proposed that "U.S. Northern Command should develop plans for consequence management and support to civil authorities that account for state-level activities and incorporate the use of National Guard and Reserve forces as first military responders."

The following topic was not specifically addressed by the CNGR:

- **Selection of NGB Chief.** The provision (Section 1811(a)) modifying the process for recommending an officer as Chief of the National Guard Bureau concerned a topic which was not specifically addressed in the CNGR report. The law brought the recommendation process for NGB Chief into greater harmony with the process used for recommending officers for other O-9 and O-10 positions. Specifically, it added requirements related to joint duty experience and capability to serve effectively in the position. This provision was generally consistent with language on page 94 the CNGR Report which states "...reserve component officers should be held to the same standards as applied to active component officers under Goldwater-Nichols, although the methods of attaining those standards may be different. If all officers must meet the same qualifications for promotion to any grade, the legitimacy of the selection of reserve component officers to senior grades and of their nominations to positions of importance and responsibility will be unassailable."

Reference(s): CRS Report RL33571, *The FY 2007 National Defense Authorization Act, Selected Military Personnel Policy Issues*, pp. 34-36. Commission on the National Guard and Reserves, *Second Report to Congress*, March 1, 2007, available at [http://www.cngr.gov].

CRS Point of Contact (POC): Lawrence Kapp at x7-7609.

*Tricare Fee Increases

Background: In early 2006, DOD proposed increases in Tricare Prime enrollment fees for retired personnel under age 65, but Section 704 of the FY2007 John Warner National Defense Authorization Act (P.L. 109-364) prohibited increases in premiums, deductibles, copayments, and other charges between April 1, 2006, and September 30, 2007. In submitting its proposed FY2008 budget, DOD again proposed fee increases that would provide an estimated $1.9 billion in potential savings for the year.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
Section 701 would extend to Sept. 30, 2008 the prohibition in the FY2007 Authorization Act on DOD increasing premiums and co-pays for Tricare Prime, and inpatient care charges for Tricare Standard.	Section 713 extends prohibition on Tricare fee increases through Sept. 30, 2008.	Section 701 extended prohibition of Tricare fee increases through Sept. 30, 2008.

Discussion: The FY2007 Authorization Act requested two separate reports on defense health care budget issues, one by the Government Accountability Office (GAO) and another by a DOD Task Force on the Future of Military Health Care. Both reports favored increases in the portion of costs borne by beneficiaries, but GAO found that although DOD is unlikely to realize estimated savings ($9 billion over a five-year period), it would achieve "significant savings." Although there remains considerable opposition to fee hikes among beneficiaries, the two Armed Services committees have expressed an intention to seek an eventual "comprehensive and prudent" approach to changes to health care budget issues. The conference report stated: "The conferees urge [DOD] to continue to identify opportunities to improve the quality and effectiveness of the military health care system through improved performance and health care outcomes. The conferees believe that any increase in TRICARE program cost sharing should be made only after implementation of improvements in the health care program, after consideration of the comprehensive reports mandated by Congress. . . and following consultation with military beneficiary advocates."

Reference(s): Government Accountability Office, *Military Health Care: TRICARE Cost-Sharing Proposals Would Help Offset Increasing Health Care Spending but Projected Savings are Likely Overestimated*, GAO-07-647, May 2007; Department of Defense, Task Force on the Future of Military Health Care, Interim Report, May 2007.

CRS Point of Contact (POC): Dick Best, x7-7607.

*Retiree Tricare Coverage and Employer Group Health Plans

Background: Section 707 of the FY2007 John Warner National Defense Authorization Act (P.L. 109-364) prohibited employers from offering incentives to military retirees not to enroll in employee-sponsored health care plans. Tricare beneficiaries are thus treated in the same way as Medicare beneficiaries in that they are eligible for government health care plans but they may not receive any direct inducement to forego employer-sponsored health care plans. The goal of the legislation was to discourage employer efforts to shift costs of health care coverage to DOD while not decreasing the earned benefits of retired servicemembers. On the other hand, some employers offer a variety of different health care options (sometimes known as a cafeteria plan) that permits employees eligible for Tricare to choose plans that will complement their Tricare coverage and there has been some confusion in regard to this issue. In addition, some employers, including state governments, remain opposed to the provision that may increase their health care costs and there has been discussion of repealing the FY2008 provision.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
Report language urges DOD to implement clarifications that certain common employer benefit programs do not constitute improper incentives.	No similar provision.	No language was reported.

Discussion: There remains some confusion among beneficiaries in regard to this provision and opposition among some employers. The law did not, however, address this issue. A rule that will provide DOD regulations on employer-sponsored health care is expected to be published soon in the Federal Register.

Reference(s): None.

CRS Point of Contact (POC): Dick Best, x7-7607.

*Tricare Pharmacy Fees

Background: Currently dependents of active-duty servicemembers and retired servicemembers and their dependents (up to age 65) must make co-payments of $3 for generic pharmaceuticals, $9 for formulary drugs and $22 for non-formulary drugs obtained through the Tricare retail pharmacy program. The Administration has proposed increasing co-payments for generic pharmaceuticals and formulary drugs to $5 and $15, respectively, along with $22 continuing to be required for non-formulary drugs. CBO has estimated that banning the proposed increases would increase DOD's discretionary costs by $187 million in FY2008.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
Section 702 would freeze current co-payment levels through the end of FY2008.	Section 714 would maintain current pharmacy co-payment levels through the end of FY2008. Section 715 expresses sense of Congress that DOD "has options to constrain the growth of health care spending in ways that do not disadvantage retired members of the uniformed services, and should pursue any and all such options as a first priority."	Section 702 froze current co-payment levels through the end of FY2008. It retains co-payment levels of $3 (generics), $9 (formularies), and $22 (nonformularies).

Discussion: There is considerable resistance among beneficiaries and their organizations to raising co-payment rates. GAO has concluded that increases in beneficiaries' co-payments are unlikely to permit DOD to achieve the extent of savings it has anticipated but "it is still likely to achieve significant savings." The Interim Report of the DOD Task Force on the Future of Military Health Care concluded that "The portion of costs borne by beneficiaries should be increased to a level below that of the current FEHBP [Federal Employees Health Benefits Plan] or that of generous private-sector plans and should be set at or below the level in effect in 1996." Further, the Task Force recommended that "Increases in cost-sharing should be phased in over three to five years to avoid precipitous changes."

Reference(s): Government Accountability Office, *Military Health Care: TRICARE Cost-Sharing Proposals Would Help Offset Increasing Health Care Spending but Projected Savings are Likely Overestimated*, GAO-07-647, May 2007; Department of Defense, Task Force on the Future of Military Health Care, Interim Report, May 2007.

CRS Point of Contact (POC): Dick Best, x7-7607.

*Treatment of Tricare Retail Pharmacy Network Under Federal Procurement of Pharmaceuticals

Background: Pharmaceuticals obtained by DOD are procured under federal pricing rules, but there has been a dispute regarding pharmaceuticals dispensed by the Tricare retail network: DOD has maintained that federal pricing rules apply; the pharmaceutical industry disagrees. Although there had been a provision relating to the issue in the Senate version of the defense authorization bill for FY2007, no language was included in the John Warner National Defense Authorization Act (P.L. 109-364). The conference report (H.Rept. 109-702) accompanying the final bill stated that "prescriptions dispensed by the Department of Defense Retail Pharmacy Program qualify for discounted drug prices under [38 USC] Section 8126." A court case concerning the issue was returned to a lower court on a procedural issue and has not been pursued.

H.R. 1585 House-passed Version	H.R. 1585 Senate-passed Version	P.L. 110-181
Section 703 authorizes DOD to exclude pharmaceuticals from the DOD retail pharmacy benefits program that are not available at the same price that is reflected in the Federal Supply Schedule.	Section 701 provides, effective October 1, 2007, that the Tricare Retail Pharmacy Program "shall be treated as an element of the Department of Defense for purposes of the procurement of drugs."	Section 703 provided, that after the date of enactment, the Tricare Retail Pharmacy Network shall be treated as an element of DOD for purposes of procurement of pharmaceuticals.

Discussion: Both provisions aim at encouraging pharmacies in the Tricare retail network to obtain pharmaceuticals at the same price that is available to Federal agencies, including DOD and the VA. The House version provides flexibility to DOD; the Senate Committee on Armed Services provision makes federal pricing mandatory after October 1, 2007. There has been considerable resistance to the proposal from pharmaceutical companies and retail drug stores and some observers say that making federal pricing mandatory for the Tricare Retail Pharmacy Program could be seen as a precedent for setting retail prices for pharmaceuticals obtained through Medicare.

Reference(s): None

CRS Point of Contact (POC): Dick Best, x7-7607.