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

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

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, further heightened interest and support for a wide range of military personnel policies and issues.

CRS selected a number of issues considered by Congress as it considers the FY2008 National Defense Authorization Act. In each case, a brief synopsis is provided that includes background information, a comparison of the House-passed provisions and the provisions reported by the Senate Armed Services Committee, if any, and a brief discussion of the issue. 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.

It is anticipated that this report will be updated.

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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. 110-225). The entries under H.R. 1585 and S. 1547 in the following pages are based on language in the House-passed bill and the Senate Armed Services Committee (SASC) reported bill, unless otherwise indicated.

Each presentation in this report offers the background on a given issue, tracks its legislative status, discusses the proposed 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.

Deployment Impact on Military Minor Dependents

Background: The House Committee is concerned that high deployment tempos may have an effect on the levels of child abuse in military families.

H.R. 1585 House-passed Version	S. 1547 SASC-reported Version	Conference
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."	The Senate report does not have similar language.	

Discussion: This report is exploratory in nature and does not presume a linkage between high deployment tempos and child abuse. The report is to be delivered to the Armed Services Committees by December 31, 2008. This is report language only and is not contained in the bill itself.

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	S. 1547 SASC-reported Version	Conference
The House bill contains a provision (sec. 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.	The Senate bill does not contain this language.	

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	S. 1547 SASC-reported Version	Conference
The House provision 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.	The Senate bill does not contain a similar provision.	

Discussion: It appears that this language would augment impact aid laws in cases where there is a substantial military presence and/or when military personnel policy or base structure changes bring about 'significant' changes in the average daily student attendance. Arguably, some states may receive a windfall in that service members are paying state taxes, but their dependents are being educated in other states due to military assignments. It is possible for these same states to collect additional funds if this provision is enacted.

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	S. 1547 SASC-reported Version	Conference
Sec. 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."	The Senate bill does not contain similar language.	

Discussion: By example, a member of the armed services who is arrested and confined for abuse prior to reaching eligibility for retirement, but remains confined long enough to qualify for retirement except that such time in confinement is not creditable toward retirement. If enacted, this language will allow those confined to have the time in confinement prior to the actions of a convening authority terminating retirement eligibility, to count toward that retirement.

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 the 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	S. 1547 SASC-reported Version	Conference
Sec. 642 of the House bill would make this designation authority permanent by removing the Sept. 30, 2007 termination date.	Sec. 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 of survivor benefits and directing the Secretary of Defense to review such counseling.	

Discussion: The House language allows service members to designate more than one individual to receive the Death Gratuity. Arguably, it is designed so that guardians or others who may be responsible for the service member's dependent(s) would be eligible to receive a portion of the Death Gratuity. However, there is nothing in this language that suggests or limits said designee from spending this money in any way he or she pleases. In other words, there is no requirement that the designated individual needs to spend the money in the interests of the child. The Senate language allows service members to designate a beneficiary but also creates a specific list of other such beneficiaries.

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 military 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 their retired 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. However, under law, 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, as offset by DIC, will be returned to the surviving spouse or former spouse. In other words, 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 to the surviving spouse or former spouse. 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. On certain occasions, the surviving spouse has been over paid because of the offset and recoupment is required.

H.R. 1585 House-passed Version	S. 1547 SASC-reported Version	Conference
The House provision (sec. 643) 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.	The Senate bill contained no similar provision.	

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 is expected that this provision will remove any uncertainty as to what happens during the recoupment process when an over payment is made.

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.

Special Survivor Indemnity Allowance for Persons Affected by Required 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	S. 1547 SASC-reported Version	Conference
The House provision (sec. 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.	The Senate bill contains no similar provisions.	

Discussion: Under this language, SBP-eligible surviving spouses or former spouses who are also eligible to receive DIC, will receive an additional payment of up to $40.

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	S. 1547 SASC-reported Version	Conference
The House bill does not have a similar provision.	The Senate bill contains a provision (sec. 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."	

Discussion: Under this language, a guardian or caretaker of dependents can be designated as a beneficiary. This could be helpful in those instances where the dependent child(ren) is/are very young or mentally incapacitated.

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.

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	S. 1547 SASC-reported Version	Conference
●The House provision included in Sections 401, 402, and 403: ●Authorized a Sep. 30, 2008 end strength of 525,400 for the Army and 189,000 for the Marine Corps.	The Senate, in Section 401, recommended an FY2008 end strength of 525,400 for the Army and 189,000 for the Marine Corps.	
●Established new minimum strength levels of 525,400 for the Army and 189,000 for the Marine Corps. ●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).	There were no similar provisions regarding minimum end strength or additional increases.	

Discussion: Increasing the end strength will require increased annual recruiting and retention goals. It is reasonable to project an annual recruiting goal of 85-87,000 for the active Army and 36-38,000 for the active Marine Corps. Based on recent recruiting difficulties, 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 amount of HDP was recently increased by Congress from $300 to $750 per month (P.L. 109-163, Section 627).

H.R. 1585 House-passed Version	S. 1547 SASC-reported Version	Conference
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, subject to the servicemember executing a written agreement for a period of service.	

Discussion: DOD has currently capped HDP to a maximum of $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 have been introduced to lower the age at which reservists receive retired pay and military retiree health care benefits.

H.R. 1585 House-passed Version	S. 1547 SASC-reported Version	Conference
No similar provision.	Section 655 of the Senate bill would reduce the age for receipt of retired pay by three months for each aggregate of 90 days of specified duty performed in any fiscal year after the date of enactment. Specified duty includes active duty or active serve under certain provisions of Title 10 (Sections 688, 12301(a), 12301(d), 12302, 12304, 12305, 12406) and Title 32 (Section 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.	

Discussion: The Senate provision 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 Senate provision would reduce the age at which certain reservists – those who, after the date of enactment, serve on active duty for the specified period under the specified activation authorities – can draw retired pay. However, it would not reduce the age at which they can receive retiree medical benefits; that would remain at age 60. A provision similar to this was included in the Senate version of the National Defense Authorization Act for FY2007 (S. 2766), although it applied retroactively to duty performed by reservists since September 11, 2001; however, the provision was dropped in Conference.

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 (NDAA) (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.

H.R. 1585 House-passed Version	S. 1547 SASC-reported Version	Conference
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.	

Discussion: If supported by appropriations, these increases would fund FY2008 POW/MIA operations at 100% of the requirement. This is report language only and is not contained in the bill 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. 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), and 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	S. 1547 SASC-reported Version	Conference
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.	
In Section 606, the House also supports a guaranteed pay raise of 0.5 percent above the ECI for FY2009 through FY2012.	The Senate bill does not address guaranteed future raises of 0.5 percent above the ECI.	

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 included 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 and who met 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.

H.R. 1585 House-passed Version	S. 1547 SASC-reported Version	Conference
The House provision in Section 645 would expand CRSC eligibility to include military retirees (to include Chapter 61) with a minimum of 15 years' creditable service and a disability rated as at least 60% disabling.	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. 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.	

Discussion: The legislation proposed for the FY2008 NDAA would open CRSC eligibility to some previously excluded. It is estimated that approximately 8,000 disabled retirees would be eligible for concurrent receipt under the House version and 13,000 would be eligible under the Senate version.

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 Act (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	S. 1547 SASC-reported Version	Conference
Section 525 would recodify 10 USC, chapters 1606 (MGIB-SR) and 1607 (REAP), to Chapter 33 of Title 38.	No similar provision.	

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. Section 525 of H.R. 1585 would effect such a transfer.

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 area of interest, given its unique status as both a state and federal force. The FY2007 John Warner National Defense Authorization Act (P.L. 109-364, sec. 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.

H.R. 1585 House-passed Version	S. 1547 SASC-reported Version	Conference
Section 1611(a) specifies that -- in addition to the Chief's current duties as principal adviser 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 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 1611(b) would also make the Chief an adviser on National Guard matters to the Commander of U.S. Northern Command and to the Secretary of Homeland Security.	No similar provision.	
Section 1611(c) would change the grade of the Chief of the National Guard Bureau from Lieutenant General (O-9) to General (O-10).	Sec 533(b) would similarly change 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.	Section 533(a) would add new requirements for an officer to be recommended for appointment	

H.R. 1585 House-passed Version	S. 1547 SASC-reported Version	Conference
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 (discussed below).	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 possess 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 possess such other qualifications as the Secretary of Defense prescribes.	
Section 1611(e) would repeal the prohibition on officers 64 years of age or older from holding the position of Chief, NGB.	Section 533(c) is identical to Section 1611(e).	
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 Section 1611, within 120 days of enactment.	No similar provision.	
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."	No similar provision.	

H.R. 1585 House-passed Version	S. 1547 SASC-reported Version	Conference
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 with other federal agencies, the Adjutants General of the States, U.S. Joint Forces Command, and U.S. Northern Command.	No similar provision.	
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 Section 1613(b).	

Discussion: Most of the provisions in the House and Senate bills track closely with recommendations contained in the CNGR's Second Report to Congress. For example, the both the House and Senate bills (Sections 1611(c) and 533(b), respectively) would increase the rank of the Chief of the National Guard Bureau from lieutenant general to general, as advocated by CNGR Recommendation 13; and both bills (sec. 1613(b) and Section 532(a)(1)) would transfer authority for prescribing the NGB charter to the Secretary of Defense (CNGR Recommendation 12). Section 533(d) of the Senate bill, relating to the Chief's role as advisor to the Secretary of Defense, corresponds closely with the first part of CNGR Recommendation 10; Section 1611(a) of the House bill is similar, but assigns greater advisory authority to the Chief than the CNGR Recommendation. Section 1611(b) of the House bill, relating to the Chief's role as advisor to the Commander of U.S. Northern Command and to the Secretary of Homeland Security, corresponds closely with the second part of CNGR Recommendation 10. House provisions 1612(a), concerning the NGB as a joint activity of the Department of Defense, and House provision 1613(a), concerning a new function for the NGB, mirror CNGB Recommendations 9 and 11, respectively.

The provisions modifying the process for recommending an officer as Chief of the National Guard Bureau concerns a topic which is not addressed in the CNGR report. Both provisions appear to be trying to bring the recommendation process for NGB Chief into greater harmony with the process used for recommending officers for other three star (O-9) and four star (O-10) positions. The House provision (1611(d)) specifically incorporates the requirements of 10 USC 601(d) into the Chief's selection process. Section 601(d) requires that when an officer is recommended for initial appointment in the grade of O-9 or O-10, the Chairman of the Joint Chiefs of Staff must submit to the Secretary of Defense an evaluation of that officer's performance "as a member of the Joint Staff and in other joint duty assignments." It also specifies that when a O-9 or O-10 vacancies occur, the Secretary of Defense must inform the President of the qualifications an officer needs to effectively

carry out the duties of the office. While the Senate provision (533(a)) does not refer to Section 601(d), it does add requirements related to joint duty experience and capacity to serve in the position of NGB Chief.

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].

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*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	S. 1547 SASC-reported Version	Conference
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.	No comparable provision although the accompanying report (S.Rept. 110-77) stated that the DOD proposal for higher fees was "premature" and requested that DOD consult with Congress on any proposed fee changes.	

Discussion: The FY2007 Authorization Act requested two separate reports on defense health care budget issues, one by the General 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.

Reference(s): None.

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 effort 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	S. 1547 SASC-reported Version	Conference
Report language urges DOD to implement clarifications that certain common employer benefit programs do not constitute improper incentives.	No comparable language.	

Discussion: There remains some confusion among beneficiaries in regard to this provision and opposition among some employers. Amendments may be offered at some point to remove the current prohibition.

Reference(s): None.

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