Congressional Research Service
Informing the legislative debate since 1914

FY2018 National Defense Authorization Act: Selected Military Personnel Issues

name redacted
Analyst in Military Manpower

name redacted
Specialist in Military Manpower Policy

name redacted
Senior Research Librarian

August 22, 2017

Congressional Research Service
7-....
www.crs.gov
R44923

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

Military personnel issues typically generate significant interest from many Members of Congress and their staffs. The Congressional Research Service (CRS) has selected a number of the military personnel issues considered in deliberations on H.R. 2810 as passed by the House, on July 14, 2017, and S. 1519 as reported by the Senate Armed Services Committee. This report provides a brief synopsis of sections in each bill that pertain to selected personnel policies. These include issues such as military end-strengths, pay and benefits, and other major policy issues.

This report focuses exclusively on the annual national defense authorization act (NDAA) legislative process. It does not include language concerning appropriations, or tax implications of policy choices, topics that are addressed in other CRS products. Issues that have been discussed in the previous year's defense personnel reports are designated with an asterisk in the relevant section titles of this report.

Contents

Figures

Contacts

Introduction

Each year, the House and Senate armed services committees take up national defense authorization bills. The House of Representatives passed the National Defense Authorization Act for Fiscal Year 2018 (H.R. 2810) on July 14, 2017. The Senate Armed Services Committee reported its version of the NDAA (S. 1519) on July 10, 2017. These bills contain numerous provisions that affect military personnel, retirees, and their family members. Provisions in one version are sometimes not included in the other, are treated differently, or are identical in both versions. Following passage of each chamber's bill, a conference committee typically convenes to resolve the differences between the respective chambers' versions of the bill. This report is intended to highlight selected personnel-related issues that may generate high levels of congressional and constituent interest.[1] CRS will update this report to reflect enacted legislation.

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

Some issues discussed in this report were previously addressed in the National Defense Authorization Act for Fiscal Year 2017 (P.L. 114-328) and discussed in CRS Report R44577, *FY2017 National Defense Authorization Act: Selected Military Personnel Issues*, by (name reda cted) et al. , or other reports. Those issues that were considered previously are designated with an asterisk in the relevant section titles of this report.

*Active Duty End-Strength

Background: The authorized active duty end-strengths for FY2001, enacted in the year prior to the September 11 terrorist attacks, were as follows: Army (480,000), Navy (372,642), Marine Corps (172,600), and Air Force (357,000).[2] Over the next decade, in response to the demands of wars in Iraq and Afghanistan, Congress substantially increased the authorized personnel strength of the Army and Marine Corps. Congress began reversing those increases in light of the withdrawal of U.S. forces from Iraq in 2011, the drawdown of U.S. forces in Afghanistan beginning in 2012, and budgetary constraints. In FY2017, Congress halted further reductions in Army and Marine Corps end-strength and provided a slight end-strength increase. End-strength for the Air Force generally declined from 2004-2015, but increased in 2016 and 2017. End-strength for the Navy declined from 2002-2012, increased in 2013, and has remained essentially stable since then. Authorized end-strengths for FY2017 and proposed end-strengths for FY2018 are in **Figure 1**.

[1] CRS military personnel reports in previous years have included military health care (TRICARE) issues. This FY2018 report does not include analysis of health care-related provisions.

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

House-Passed H.R. 2810	Senate Armed Services Committee (reported) S. 1519
Sec. 401 would authorize a total FY2018 active duty end-strength of 1,334,000 including 486,000 for the Army 327,900 for the Navy 185,000 for the Marine Corps 325,100 for the Air Force **Sec. 402** would amend 10 U.S.C. §691 to set minimum end-strengths as follows: 486,000 for the Army 327,900 for the Navy 185,000 for the Marine Corps 325,100 for the Air Force	**Sec. 401** would authorize a total FY2018 active duty end-strength of 1,320,000 including 481,000 for the Army 327,900 for the Navy 186,000 for the Marine Corps 325,100 for the Air Force

Discussion: In comparison to FY2017 authorized end-strengths, the Administration's FY2018 budget proposed no change for the Army and Marine Corps, slightly higher end-strengths for the Navy (+1,400) and a more substantial increase for the Air Force (+4,000).

Both the House and Senate bills approved higher end-strengths for the Army. In comparison to the Administration's request, the House approved an additional 10,000 while the Senate bill includes an additional 5,000. Section 402 of the House bill would adjust the minimum end-strengths required by 10 U.S.C. §619 to a level equal to the authorized end-strengths set in Section 401.

The House approved a Marine Corps end-strength identical to the Administration's request, while the Senate bill includes slightly more (+1,000 compared to the Administration request).

The House and Senate bills both approved end-strengths identical to the Administration's request for the Navy and Air Force.

Figure 1. FY2018 Authorized Active Duty End-Strength

Comparison of FY2017 Enacted and President's Budget Request with H.R. 2810 and S. 1519

	FY2017 Enacted	President's Budget	House Passed FY2018			Senate Committee FY2018		
			Number		Change from FY2017 enacted	Number		Change from FY2017 enacted
Army	476,000	476,000	486,000	⇧	10,000	481,000	⇧	5,000
Navy	323,900	325,300	327,900	⇧	4,000	327,900	⇧	4,000
Marine Corps	185,000	185,000	185,000		0	186,000	⇧	1,000
Air Force	321,000	325,000	325,100	⇧	4,100	325,100	⇧	4,100
Total Active Duty End-Strength	**1,305,900**	**1,311,300**	**1,324,000**	⇧	**18,100**	**1,320,000**	⇧	**14,100**

Notes: Up arrows indicate increases from the FY2017 authorization.

Reference(s): Previously discussed in CRS Report R44577, *FY2017 National Defense Authorization Act: Selected Military Personnel Issues*, by (name redacted) et al. , and similar reports from earlier years.

CRS Point of Contact: (name redacted), x7-.....

*Selected Reserves End-Strength

Background: The overall authorized end-strength of the Selected Reserves has declined by about 6% over the past 16 years (874,664 in FY2001 versus 820,200 in FY2017).[3] Much of this can be attributed to the reductions in Navy Reserve strength during this period. There were also modest shifts in strength for some other components of the Selected Reserve. Authorized end-strengths for FY2017 and proposed end-strengths for FY2018 are in **Figure 2**.

House-Passed H.R. 2810	Senate Armed Services Committee (reported) S. 1519
Sec. 411 would authorize a total FY2017 Selected Reserve end-strength of 829,900 including: Army National Guard: 347,000 Army Reserve: 202,000 Navy Reserve: 59,000 Marine Corps Reserve: 38,500 Air National Guard: 106,600 Air Force Reserve: 69,800 Coast Guard Reserve: 7,000	**Sec. 411** would authorize a total FY2017 Selected Reserve end-strength of 823,900 including: Army National Guard: 343,500 Army Reserve: 199,500 Navy Reserve: 59,000 Marine Corps Reserve: 38,500 Air National Guard: 106,600 Air Force Reserve: 69,800 Coast Guard Reserve: 7,000

Discussion: Relative to FY2017 authorized end-strengths, the Administration's FY2018 budget proposed slight increases for the Navy Reserve (+1,000 compared to FY2017 authorized), Air Force Reserve (+800), and Air National Guard (+900); and no change for the Marine Corps Reserve, Army National Guard and Army Reserve.

The House and Senate bills both approved end-strengths identical to the Administration's request for all the reserve components except the Army Reserve. Both the House and Senate bills approved higher end-strengths for the Army National Guard and Army Reserve. In comparison to the Administration's request, the House approved an additional 4,000 for the Army National Guard and 3,000 more for the Army Reserve, while the Senate approved an extra 500 for both the Army National Guard and Army Reserve.

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

Figure 2. FY2018 Authorized Reserve End-Strength

Comparison of FY2017 Enacted and President's Budget Request with H.R. 2810 and S. 1519

	FY2017 Enacted	President's Budget	House Passed FY2018			Senate Committee FY2018		
			Number		Change from FY2017 enacted	Number		Change from FY2017 enacted
Army National Guard	343,000	343,000	347,000	⇧	4,000	343,500	⇧	500
Army Reserve	199,000	199,000	202,000	⇧	3,000	199,500	⇧	500
Navy Reserve	58,000	59,000	59,000	⇧	1,000	59,000	⇧	1,000
Marine Corps Reserve	38,500	38,500	38,500		0	38,500		0
Air National Guard	105,700	106,600	106,600	⇧	900	106,600	⇧	900
Air Force Reserve	69,000	69,800	69,800	⇧	800	69,800	⇧	800
Coast Guard Reserve	7,000	7,000	7,000		0	7,000		0
Total Reserve End-Strength	**820,200**	**822,900**	**829,900**	⇧	**9,700**	**823,900**	⇧	**3,700**

Notes: Up arrows indicate increases from the FY2017 authorization.

Reference(s): Previously discussed in CRS Report R44577, *FY2017 National Defense Authorization Act: Selected Military Personnel Issues*, by (name redacted) et al., and similar reports from earlier years.

CRS Point of Contact: (name redacted), x7-.....

*Military Pay Raise

Background: Concerns with the overall cost of military personnel, combined with long-standing congressional interest in recruiting and retaining high-quality personnel to serve in the all-volunteer military, have continued to focus interest on the military pay raise. Section 1009 of Title 37 United States Code provides a permanent formula for an automatic annual increase in basic pay that is indexed to the annual increase in the Employment Cost Index (ECI). The statutory formula stipulates that the increase in basic pay for 2018 will be 2.4% unless either (1) Congress passes a law to provide otherwise; or (2) the President specifies an alternative pay adjustment under subsection (e) of 37 U.S.C. §1009. Increases in basic pay are typically effective at the start of the calendar year, rather than the fiscal year.

The FY2018 President's Budget requested a 2.1% military pay raise, lower than the statutory formula of 2.4%.

House-Passed H.R. 2810	Senate Armed Services Committee (reported) S. 1519
Sec. 601 specifies that the automatic increase in basic pay under the statutory formula of 37 U.S.C. §1009 shall take effect, "notwithstanding any determination made by the President under subsection (e) of such section with respect to an alternative pay adjustment..."	**Sec. 601** would waive the automatic increase in basic pay under the statutory formula of 37 U.S.C. §1009, and specifies that the pay raise shall be 2.1%. **Sec. 604** would amend the language in 37 U.S.C. 1009(e) that authorizes the President to set an alternative pay adjustment,

House-Passed H.R. 2810	Senate Armed Services Committee (reported) S. 1519
	removing language allowing the President to make such an adjustment on the grounds of "serious economic conditions affecting the general welfare."

Discussion: The House bill would require the statutory formula go into effect, resulting in a 2.4% pay raise for all servicemembers effective on January 1, 2018. The Senate bill would waive the automatic adjustment to basic pay specified in 37 U.S.C. §1009 and provide an increase of 2.1%, effective January 1, 2018.

Currently, 37 U.S.C. 1009(e) authorizes the President to set an alternative pay adjustment,

> (1) If, because of national emergency or serious economic conditions affecting the general welfare, the President considers the pay adjustment which would otherwise be required by this section in any year to be inappropriate, the President shall prepare and transmit to Congress before September 1 of the preceding year a plan for such alternative pay adjustments as the President considers appropriate, together with the reasons therefor

Section 604 of the Senate bill would remove the language allowing the President to make such an adjustment on the grounds of "serious economic conditions affecting the general welfare." If adopted, the President's authority to make such an adjustment would be limited to cases of "national emergency."

Reference(s): For an explanation of the pay raise process and historical increases, see CRS In Focus IF10260, *Defense Primer: Military Pay Raise*, by (name redacted). Previously discussed in CRS Report R44577, *FY2017 National Defense Authorization Act: Selected Military Personnel Issues*, by (name redacted) et al. , and similar reports from earlier years.

CRS Point of Contact: (name redacted), x7-.....

*Housing Allowances

Background: Under current law, all servicemembers are entitled to either government-provided housing or a housing allowance. For those living in the United States, the housing allowance is known as Basic Allowance for Housing (BAH).

Some servicemembers entitled to BAH live on military bases in housing that has been privatized. During the mid-1990s, Congress granted DOD a number of special authorities to enable the department to provide incentives for private firms to partner with DOD to improve the quality of housing available to servicemembers living on military installations. Since then, the Military Housing Privatization Initiative (MHPI) has enabled DOD to rely on private sector financing, expertise, and innovation for the construction and operation of housing for both families and individual servicemembers.[4]

The FY2015 National Defense Authorization Act allowed the Secretary of Defense to reduce BAH payments by 1% of the national average monthly housing cost. The FY2016 National

[4] As of 2012, the most recent year for which information is publicly available, DOD had privatized (i.e., transferred ownership and operation) approximately 193,000 military family housing units, or almost 80% of the domestic military family housing inventory, under 50-year agreements. The privatization of housing for unaccompanied servicemembers (barracks and dormitories) has also advanced, but at a slower pace.

Defense Authorization Act extended this authority, authorizing an additional 1% reduction per year through 2019, for a maximum reduction of 5% of the national monthly average housing cost.

House-Passed H.R. 2810	Senate Armed Services Committee (reported) S. 1519
No similar provision	**Sec. 602** would prohibit the Secretary of Defense from setting a BAH rate below that in effect on December 31, 2017 for servicemembers who reside in housing acquired or constructed under the MHPI. The prohibition would remain in effect until January 1, 2019. This provision would also require the Comptroller General to submit a report to the House and Senate Armed Services committees on, among other things, the impact that BAH rate reductions have on the long term viability of MHPI.

Discussion: The amount of money paid to the companies that operate privatized housing is tied to the Basic Allowance for Housing (BAH) rates for the individual occupying the housing. As these payments may constitute a significant source of revenue for firms owning and operating privatized military housing, reductions in BAH could lower those firms' revenues. The Senate provision would halt the reductions in BAH for servicemembers living in privatized housing, and require the Comptroller General to provide to the House and Senate Armed Services Committees a report that analyzes several aspects of the MHPI, including the impact of BAH rate reduction on its long term viability. The House had no similar provision.

Reference: CRS Report RL33446, *Military Pay: Key Questions and Answers*, by (name redacted) and (name redacted) .

CRS Point of Contact: (name redacted), x7-.....

*Defense Commissary System

Background: Over the past few years, Congress has been concerned with improving the Defense Commissary Agency (DeCA) system, mandating several studies and reports. However, Congress has stopped short of major changes that would significantly reduce or eliminate the commissary subsidy. Recent reform proposals have sought to reduce DeCA's reliance on appropriated funds without compromising patrons' commissary benefits or the revenue generated by DOD's non-appropriated fund (NAF) entities.

DeCA's goal is to provide patrons with an average savings rate of 30% over commercial providers. A March 2017 GAO report found that DOD "lacks reasonable assurance that it is maintaining its desired savings rate for commissary patrons."[5] This GAO report recommends that DOD address limitations identified in its savings rate methodology; develop a plan with

[5] The GAO report was requested in S.Rept. 114-49 to accompany S. 1376, the Senate-version of the FY2016 NDAA. GAO, *Defense Commissaries: DOD Needs to Improve Business Processes to Ensure Patron Benefits and Achieve Operational Efficiencies*, GAO-17-80, March 23, 2017.

objectives, goals, and time frames to improve efficiency in product management; and conduct comprehensive cost-benefit analyses for service contracts and distribution options.[6] DOD concurred with the first two recommendations and partially concurred with the third stating that "authorizing legislation is required."[7]

In the FY2017 NDAA (P.L. 114-328), Congress authorized $1.2 billion in commissary funding.

House-Passed H.R. 2810	Senate Armed Services Committee (reported) S. 1519
Sec. 632 would require a report regarding management of military commissaries and exchanges.	No provision.

Discussion: Section 632 of the House-passed H.R. 2810 would require DOD to submit a report regarding management practices of military commissaries and exchanges no later than 180 days after the enactment of this Act. The report would require a cost benefit analysis with the joint goals of reducing operating costs of military commissaries and exchanges by $2 billion over fiscal years 2018-2022 and not raising patron costs.

The President's FY2018 budget request for $1.39 billion includes funding for DeCA to operate 240 commissary stores on military installations worldwide, employing a workforce of over 14,000 civilian *full-time equivalent* employees.[8] The President's FY2018 budget request for commissaries is the same amount Congress authorized in FY2016. H.R. 2810 would authorize $1.34 billion for DeCA's commissary operations for FY2018. This is $45 million less than the Administration's proposal with reductions in civilian personnel compensation and benefits ($20 million) and commissary operations ($25 million).

Currently, the Senate version has no commissary provisions. However, in the *Report to Accompany* S. 1519 (S.Rept. 115-125), the Senate would authorize the full $1.4 billion ($1,389,340,000) requested for FY2018 in Section 4501.[9]

Reference(s): CRS Report R44577, *FY2017 National Defense Authorization Act: Selected Military Personnel Issues*, by (name redacted) et al. **CRS Point of Contact**: (name redacted) , x7 -.....

*Survivor Benefits

Background: Under the Survivor Benefit Plan (SBP), a military retiree may have a portion of his or her monthly retired pay withheld in order to provide, after his or her death, a monthly benefit to a surviving spouse or other eligible recipients. When an active duty servicemember dies, his or her survivor's payment through the SBP is usually 55% of the retired base pay that the member would otherwise have been eligible to receive. For reservists who die during inactive-duty training (IADT), the base amount reflects their years of service, which renders the SBP payment

[6] Ibid, pp. 31-32.

[7] Ibid, p. 44.

[8] Department of Defense Office of the Under Secretary of Defense (Comptroller) Chief Financial Officer, *Defense Budget Overview Fiscal Year 2018 Budget Request*, May 12, 2017, Figure 5-1 Pay & Benefits Funding (PDF p. 41) and Figure5-6. Military Family Support Programs (PDF pp. 51-52) at http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2018/fy2018_Budget_Request_Overview_Book.pdf.

[9] S.Rept. 115-125, *Report to Accompany* S. 1519, July 10, 2017, p. 520.

less than if the member died on active duty. The FY2017 NDAA (P.L. 114-328 §642) provides equal benefits under SBP for survivors of reserve component members who die in the line of duty during IADT.

By law, surviving spouses who receive both an annuity from DOD as a beneficiary of the SBP and from the Department of Veterans Affairs' (VA) Dependency and Indemnity Compensation (DIC) must have their SBP payments reduced by the amount of DIC. Congress first authorized a payment to such surviving spouses to offset that reduction in the FY2008 NDAA.[10] This benefit is called the Special Survivor Indemnity Allowance (SSIA). Monthly SSIA payments are currently $310 and are taxable. Section 646 of the FY2017 NDAA extended the payment of SSIA until May 31, 2018.

House-Passed H.R. 2810	Senate Armed Services Committee (reported) S. 1519
Sec. 621 expresses findings and sense of Congress regarding the special survivor indemnity allowance.	**Sec. 631** would make adjustments to Survivor Benefit Plan for members electing lump sum payments of retired pay under the modernized retirement system for members of the uniformed services. **Sec. 638** would make permanent extension and cost-of-living adjustments of special survivor indemnity allowances under the Survivor Benefit Plan.

Discussion: Section 621 of the House-passed bill expresses the sense of Congress that the SSIA was created as a stop gap measure to assist widowed spouses by reducing the SBP/DIC offset required by law. This section also states that the dollar-for-dollar reduction in payment to surviving spouses should be fully repealed at the first opportunity.

Section 631 of the Senate version would modify Section 1447 of Title 10, United States Code, and Section 1452 of Title 10, United States Code, to ensure equitable treatment under the SBP of members of the uniformed services covered by the modernized retirement system who elect to receive a lump sum of retired pay, as authorized under Section 1415 of Title 10, United States Code.

Section 638 of the Senate version would amend Section 1450 of Title 10, United States Code, to permanently extend the authority to pay the SSIA and would require inflation adjustments to that allowance by the amount of the military retired pay cost-of-living adjustment (COLA) for each calendar year beginning in 2019.

Reference(s): CRS Report R44577, *FY2017 National Defense Authorization Act: Selected Military Personnel Issues*, by (name redacted) et al. , FY2017 National Defense Authorization Act: Selected Military Personnel Issues; CRS Report R40757, *Veterans' Benefits: Dependency and Indemnity Compensation (DIC) for Survivors*, by (name redacted) ; CRS Report RL34751, *Military Retirement: Background and Recent Developments*, by (name redacted) ; and CRS Report R40589, Concurrent Receipt: Background and Issues for Congress, by (name reda cted) .

CRS Point of Contact: (name redacted), x7 -....

[10] P.L. 110-181, §644.

*Servicemember Education, Credentialing, and Transition

Background: In the past few decades, Congress has enacted legislation and appropriated funds for servicemember off-duty education (tuition assistance), credentialing programs, and transition services to support servicemembers and veterans in translating military skills and experience into post-service education and employment opportunities. Three programs of note are the Transition Assistance Program (TAP);[11] the Credentialing Opportunities Online (COOL);[12] and the DOD Skillbridge program, which is also known as the Job Training, Employment Skills Training, Apprenticeships, and Internships (JTEST-AI) program.[13]

House-Passed H.R. 2810	Senate Armed Services Committee (reported) S. 1519
Sec. 546 would expand professional credentialing opportunities for servicemembers to include pursuit of credentials valued by the services *or* by civilian employers. **Sec. 619** would direct DOD to provide states with non-classified information about its training programs, so states can evaluate if this training meets state occupational licensing requirements.	**Sec. 542** would require pre-separation counseling on assistance and support services for caregivers of certain veterans. **Sec. 546** would establish a pilot program on integration of DOD and non-Federal efforts for transition from active duty to civilian employment. **Sec. 652** would add information from the Department of Agriculture to the Transition Assistance Program.

Discussion: The TAP curriculum culminates in a one-week course in the months immediately preceding a member's separation, retirement, or release from active duty. Congress has required that certain information be provided and specific topics covered in the associated pre-separation counseling.[14] Provisions in the Senate bill (Sections 542 and 652) would expand some of these statutory requirements.

Section 546 of the Senate committee-reported bill would establish a 2-year pilot program to integrate and coordinate the various components of DOD's education, transition, and credentialing programs with state and local programs and agencies. The pilot program would be carried out in at least five installations around the country with a large enough employment or industrial base to support a variety of occupations. Section 619 of the House bill would seek to improve the "accuracy and completeness" of employment skills verification and certification for members transitioning out of the military and seeking civilian employment. It would also require

[11] The military Transition Assistance Program (TAP) was established in the National Defense Authorization Act (NDAA) for Fiscal Year 1991 (P.L. 101-510, Section 502) and codified in 10 U.S.C. §1142. This program provides counseling services and workshops to help servicemembers transition into the civilian workforce.

[12] The COOL program is authorized by Section 2015 of Title 10 United States Code and it provides funded vouchers to help servicemembers pay for exams and maintenance of civilian certifications and licenses. The program is funded through COOL funds, tuition assistance funds, and through individual GI Bill benefits.

[13] JTEST-AI includes civilian job training for transitioning military servicemembers up to six months prior to separation. It includes both apprenticeships and internships. The training must offer a high probability of employment and be provided to the servicemember at little or no cost.

[14] 10 U.S.C. §1142.

state-specific certification and licensing information to be provided in pre-separation TAP counseling.

Sections 546 of the House bill would expand the types of professional credentialing programs (authorized by 10 U.S.C. §2015) available to uniformed servicemembers.

Reference(s): CRS In Focus IF10347, *Military Transition Assistance Program (TAP): An Overview*, by (name redacted) , and CRS Report R42790, *Employment for Veterans: Trends and Programs*, coordinated by (name redacted) .

CRS Point of Contact: (name redacted), x7 -.....

*Military Sexual Assault and Sexual Harassment

Background: Over the past decade, the issues of sexual assault and sexual harassment in the military have generated a good deal of congressional and media attention. In 2005, DOD issued its first department-wide sexual assault policies and procedures.[15] These policy documents built on recommendations from the Joint Task Force for Sexual Assault Prevention and Response and on congressional requirements specified in the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (P.L. 108-375). In the same year, the Sexual Assault Prevention and Response Office (SAPRO) was established as a permanent office serving as DOD's primary oversight body for all service-level programs. Sexual harassment policy and oversight is handled by DOD's Office of Diversity and Military Equal Opportunity.[16] Between 2012 and 2017, DOD took a number of steps to implement its own strategic initiatives as well as dozens of congressionally mandated actions related to sexual assault prevention and response, victim services, reporting and accountability, and military justice.[17] In FY2016, estimated sexual assault prevalence rates across the DOD's active-duty population were 4.3% for women and 0.6% for men. These estimated prevalence rates were slightly lower than reported prevalence rates in 2014 (4.9% and 0.9% respectively).[18]

House-Passed H.R. 2810	Senate Armed Services Committee (reported) S. 1519
Reporting and Accountability	*Reporting and Accountability*
Sec. 512 would require public availability of information related to disposition of claims regarding discharge or release of members of the Armed Forces when the claims involve sexual assault.	**Sec. 518** would require a process for review of characterization of terms of discharge of members of the armed forces who are survivors of sex-related offenses.
Sec. 517 would require a process for review of characterization of terms of discharge of members of the armed forces who are survivors	**Sec. 520** would require public availability of information related to disposition of claims regarding discharge or release of members of the Armed Forces when the claims

[15] DOD Directive 6495.01 and DOD Instruction 6495.02.

[16] Although there is a relationship between sexual harassment and sexual assault, sexual harassment/sexism is considered a form of discrimination.

[17] For more information on congressional activity prior to 2013 see CRS Report R43168, *Military Sexual Assault: Chronology of Activity in Congress and Related Resources*, by (na me redacted) .

[18] These estimates are based on survey data for respondents who experienced behaviors consistent with the definition of sexual assault in the previous year. Department of Defense, *2016 Workplace and Gender Relations Survey of Active Duty Members; Overview Report*, OPA Report No. 2016-050, May 2017, pp. 34 & 36.

House-Passed H.R. 2810	Senate Armed Services Committee (reported) S. 1519
of sex-related offenses. **Sec. 527** would require annual reporting on incidents involving nonconsensual distribution of private sexual images. **Sec. 528** would require annual reporting on sexual assaults committed by a member of the Armed Forces against the member's spouse or other family member. **Sec. 531** would define and include the term "sexual coercion" for DOD annual reporting purposes. **Sec. 532** would require management and administration review of sexual assault prevention and response programs for the Army reserve components. *Victim Services* **Sec. 525** would require Special Victims' Counsel training on support for male victims of sexual assault. *Military Justice and Investigations* **Sec. 522** would require a minimum confinement period for conviction of certain sex-related offenses committed by members of the Armed Forces. **Sec. 523** would prohibit wrongful broadcast or distribution of intimate visual images. **Sec. 524** would allow the Special Victims' Counsel or Victims' Legal Counsel to obtain certain information in the possession of the prosecutor.	involve sexual assault. *Prevention* **Sec. 548** would require sexual assault prevention and response training for enlistees in a delayed entry program. *Military Justice and Investigations* **Sec. 521** would revise the Manual for Courts-Martial with respect to dissemination of visual depictions of private areas or sexually explicit conduct without the consent of the person depicted. **Sec. 532** would prohibit wrongful broadcast or distribution of intimate visual images.

Discussion: DOD is required to produce an annual report for Congress on sex-related offenses.[19] Congress uses this information in its oversight role. The House version of the bill would add additional reporting requirements including incidents of nonconsensual distribution of private sexual images (Section 527), family-member sexual assault (Section 528),[20] and sexual coercion (Section 521). A House provision (Section 532) would also require additional reviews of SAPR

[19] P.L. 111-383 §1631, codified in 10 U.S.C. §1561 note. DOD makes current and archived annual reports available to the public, online at: http://www.sapr.mil/index.php/reports/sapro-reports.

[20] The Statement of Administration Policy (p. 6) asks Congress to "consider whether the information required by section 528 is already provided in annual Family Advocacy Program reports." Office of Management and Budget, *Statement of Administration Policy*, H.R. 2810 - *National Defense Authorization Act for Fiscal Year 2018*, Washington, DC, July 11, 2017.

programs for the Army National Guard and Reserve components, with a focus on monitoring timeliness of line-of-duty determinations and investigation processing.[21]

In March 2017, the Senate Armed Services Committee held hearings in response to allegations of online sexual harassment and nonconsensual sharing of sexually explicit photos by servicemembers on the *Marines United* website.[22] In the hearing, senior Navy and Marine Corps officials noted that perpetrators could potentially be held accountable for these actions under Articles 92 (failure to obey an order or regulation), 120 (rape and sexual assault), and/or 134 (good order and discipline) of the Uniform Code of Military Justice (UCMJ). However, General Robert, B. Neller noted that a more explicit UCMJ provision might assist commanders in holding perpetrators accountable.[23] Both the House (Section 523) and Senate (Section 532) bills include provisions that would add punitive articles to the UCMJ prohibiting the wrongful broadcast or distribution of intimate visual images. A provision in the Senate bill (Section 521) would also amend the Manual for Courts-Martial for activities related to the nonconsensual dissemination of sexually explicit conduct or intimate photos.

Other potential changes to judicial process include a House provision (Section 524) that would create an *open discovery* rule. The Administration has expressed concern about this provision, stating,

> The Administration shares Congress' goal of preventing sexual assault in the military and holding accountable those who commit the offense. Although the Administration is sympathetic to the motivation behind section 524, affording victim's counsel with open file discovery may have the unintended consequence of impairing the successful prosecution of cases by creating additional opportunities for the defense to challenge the victim's testimony."[24]

Congress has raised concerns about the character of discharge for certain veterans who experienced sexual trauma while serving in the military. Psychological trauma following a sexual assault incident has been associated with negative behavioral changes in the victim such as increased drug or alcohol use, poor work performance, or other disciplinary issues. These behaviors may affect the nature of a victim's discharge from the Armed Forces. Discharges that are not under "honorable" conditions may prevent servicemembers from being eligible for certain veteran's benefits. Under certain circumstances, servicemembers may appeal these decisions through Discharge Review Boards or Boards of Correction for Military Records. Section 512 of the House-passed bill and Section 520 of the Senate-reported bill would require publicly-available statistics on applications to these boards from those who have alleged a relationship between sex-related offenses and the nature of their discharge. In addition, provisions in both House and Senate versions of the bill would codify and expand existing requirements that the services establish processes for which alleged sexual assault survivors may challenge the terms of characterization of discharge or separation.

---

[21] Line of duty (LOD) determinations are the results of investigations into the member's illness, injury, disease, or death and may affect DOD medical benefits that Reserve Component members are eligible to receive. For more information, see Department of Defense, *Reserve Component (RC) Line of Duty Determination for Medical and Dental Treatments and Incapacitation Pay Entitlements,* April 19, 2016.

[22] See hearing transcript for U.S. Congress, Senate Committee on Armed Services, *Information Surrounding the Marines United Website*, 115th Cong., March 14, 2017.

[23] General Neller stated, "I think there may be some discussion about […] whether there are provisions within the UCMJ that may need to be more specific about this particular type of potential offense. Because this is not new -- new, but there's got to be some tools for commanders to be able to address specifically."

[24] Office of Management and Budget, *Statement of Administration Policy*, H.R. 2810 - *National Defense Authorization Act for Fiscal Year 2018*, Washington, DC, July 11, 2017.

Concerns about male victims of sexual assault prompted the House in 2012 to call for a review of DOD's policies and protocols for the provision of medical and mental health care for male servicemembers.[25] In a 2015 report, the GAO noted a number of areas where actions were needed to specifically address support for male victims of sexual assault. In response to this report, DOD has initiated gender-specific treatment; for example, male-only therapy groups, and enhanced medical staff training on responding to and treating male victims. Section 525 of the House-passed bill would require additional training for Special Victims Counsel on male-specific challenges for victims of sex-related offenses.[26]

Reference(s): See also CRS Report R43168, *Military Sexual Assault: Chronology of Activity in Congress and Related Resources*, by (name redacted) ; CRS Report R43213, *Sexual Assaults Under the Uniform Code of Military Justice (UCMJ): Selected Legislative Proposals*, by (name redacted) . CRS Report R43928, *Veterans' Benefits: The Impact of Military Discharges on Basic Eligibility*, by (name redac ted) and (name redacted) . Previously discussed in CRS Report R44577, *FY2017 National Defense Authorization Act: Selected Military Personnel Issues*, by (name redacted) et al. , and similar reports from earlier years.

CRS Point of Contact: (name redacted), x7 -.....

Author Contact Information

(name redacted)
Analyst in Military Manpower
[redacted]@crs.loc.gov , 7-....

(name redacted)
Specialist in Military Manpower Policy
[redacted]@crs.loc.gov, 7-....

(name redacted)
Senior Research Librarian
[redacted]@crs.loc.gov, 7-....

Acknowledgments

Adam Cucchiara made contributions to this report.

[25] H.Rept. 113-102.

[26] A special victims' counsel (SVC) is a military or civilian attorney who is a member of the bar of a Federal court or of the highest court of a State and satisfies all SVC training requirements. The SVC provides legal assistance to the victim, represents the victim's best interests, and ensures that the victim is aware of his or her rights throughout the military justice process. Relevant authorities are 10 U.S.C. §§1044, 1044e and 1565b.