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FY2009 National Defense Authorization Act: Selected Military Personnel Policy Issues

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FY2009 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 heighten interest and support for a wide range of military personnel policies and issues.

The Congressional Research Service (CRS) selected a number of the military personnel issues that Congress considered as it deliberated the National Defense Authorization Act for FY2009. In each case, this report provides a brief synopsis of sections that pertain to personnel policy. It includes background information and a discussion of the issue, along with a table that contains a comparison of the bill (H.R. 5658) passed by the House on May 22, 2008, the bill (S. 3001) passed by the Senate on September 17, 2008, and the final version (S. 3001) passed by the House on September 24, 2008 and by the Senate on September 27, 2008. 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 the FY2008 National Defense Authorization Act and discussed in CRS Report RL34169 concerning that legislation. Those issues that were previously considered in CRS Report RL34169 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.

This report will be updated as needed.

Contents

FY2009 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). These bills contain numerous provisions that affect military personnel, retirees and their family members. Provisions in one version are often not included in another; are treated differently; or, in certain cases, are identical. Following passage of each by the respective legislative body, a Conference Committee is typically convened to resolve the various differences between the House and Senate versions. This year, however, a formal Conference Committee was not appointed. Rather, a final bill was drafted by leaders of the House and Senate Armed Services Committee, who also published a "joint explanatory statement" which was essentially the equivalent of a conference report. The House amended this final version into the Senate-passed version of S. 3001, and adopted it on September 24, 2008. The Senate then approved the bill on September 27th, clearing it for Presidential consideration.

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 congressional and constituent interest, and tracks their status in the FY2009 House and Senate versions of the NDAA. The Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, H.R. 5658, was introduced on March 31, 2008, reported by the House Committee on Armed Services on May 16, 2008 (H.Rept. 110-652), and passed by the House on May 22, 2008. The National Defense Authorization Act for Fiscal Year 2009, S. 3001, was introduced on May 12, 2008, reported by the Senate Committee on Armed Services on that same day (S.Rept. 110-335), and passed the Senate on September 17, 2008. The entries under the headings "Original House-passed version (H.R. 5658)" and "Original Senate-passed version (S. 3001)" in the following pages are based on language in these bills, unless otherwise indicated. The entries under the heading "Final version (S. 3001)" are based on the language of the bill negotiated by leaders of the House and Senate Armed Services Committee and amended into S. 3001, as discussed above.

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 the FY2008 National Defense Authorization Act and discussed in CRS Report RL34169 concerning that legislation. Those issues that were previously considered in CRS Report RL34169 are designated with a "*****" in the relevant section titles of this report.

Tricare Fee Increases

Background: For several years the Administration has proposed increases in co-payments and enrollment fees for retirees and their dependents who are not Medicare-eligible. The Administration argues that the growing costs of Defense health care, both in absolute terms and as a percentage of the defense budget, require efforts to seek greater contributions by users. It argues that inasmuch as Tricare Prime enrollment fees were set in 1995 and have not been raised since, it is reasonable that they should be increased. Congress has thus far refused to give DOD the requested authority to raise the fees.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
Section 701 & 702 preclude DOD from altering co-payment levels and enrollment fees through the end of FY2009.	Provides an additional $1.2 billion over the Administration request to cover rejection of the Administration's plans to raise Tricare fees (according to SASC Press Release 5/1/2008).	Section 701extends for one year the prohibition of increases in premiums, deductibles, and copayments under Tricare. Section 702 prohibits for one year increases in copayments for pharmaceuticals in the Tricare retail pharmacy program.

Discussion: The health care portion of the Defense budget has grown from $19 billion in FY2001 to over $42 billion in FY2008. Since 2006 DOD has been attempting to raise co-payment and enrollment fees for retired military personnel and their dependents who are not eligible for Medicare. (Medicare-eligible retirees can use the Tricare for Life program which would not be affected by the proposed fee increases.) DOD asserts that retirees using Tricare Prime paid approximately 27 percent of their health care costs in 1995 but now pay only 12 percent. Consistent with recommendations of the Department of Defense Task Force on the Future of Military Health Care, the proposed DOD budget for FY2009 would have gradually raised enrollment fees for those using Tricare Prime, the HMO-like option, from the current $460 (self+dependents) to 2011 rates as high as $1,750 for retirees making over $40,000 annually. DOD also proposed creating an enrollment fee for retirees who use Tricare Standard, the fee-for-service option, of $120 per year. In addition, DOD maintains that retail prescription usage and costs have contributed significantly to the growth in health care spending and recommended increases in pharmacy co-payments (along with eliminating co-payments for pharmaceuticals provided by the DOD Mail Order Pharmacy). According to DOD, these fee increases would save some $1.2 billion in FY2009. Opposition from beneficiary organizations has been strong and the Government Accountability Office concluded in May 2007 that DOD's estimates of cost savings were over-estimated. Congress has twice denied DOD authority to increase Tricare fees in FY2007 and FY2008, and has encouraged DOD to find other approaches to restraining the growth of the health care budget.

Reference(s): CRS Report RS22402, *Increases in Tricare Costs: Background and Options for Congress*. Task Force on the Future of Military Health Care, *Final Report*, December 2007 [http://www.dodfuturehealthcare.net/images/103-06-2-Home-Task_Force_FINAL_REPORT_122007.pdf]. Government Accountability Office, *Military Health Care: TRICARE Cost-Sharing Proposals Would Help Offset Increasing Health Care Spending, but Projected Savings are Likely Overestimated*, May 2007 [http://www.gao.gov/new.items/d07647.pdf].

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

Tricare Reserve Select Fees

Background: The FY2005 Ronald W. Reagan National Defense Authorization Act (P.L. 108-375) established the Tricare Reserve Select program which permitted some drilling reserve personnel to utilize Tricare but required that they pay enrollment fees interpreted to be equivalent to the 28 percent charged to Federal civil servants under the Federal Employees Health Benefits Program (FEHBP). The FY2007 John Warner National Defense Authorization Act (P.L. 109-364) extended the benefit to all drilling reservists. In December 2007 the Government Accountability Office (GAO) found that the premiums DOD established had actually exceeded the costs of providing the Tricare benefit.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
Section 705 requires DOD to recalculate premiums for Tricare Reserve Select.	Section 701 requires DOD to base fees on reported costs in the previous year rather than using Blue Cross/Blue Shield benchmarks.	Section 704 requires that for 2009 calculations for Tricare Reserve Select premiums be based on the actual cost of the coverage during 2006 and 2007.

Discussion: Tricare Reserve Select (TRS) provides a health care benefit to reservists who are in drilling status and not on active duty. (Reservists called to active duty have regular Tricare benefits that have no enrollment fees.) Current monthly premiums are $81/self or $253/self+family. Enrollment in TRS has been lower than estimated, suggesting that premium rates discourage selection or that reservists have access to more affordable civilian health care options. A GAO report published in December 2007 concluded that the premiums DOD established exceeded the reported average cost of providing care through TRS. This situation resulted, according to GAO, from DOD having used FEHBP Blue Cross/Blue Shield rates as benchmarks that in practice proved to be higher than necessary to cover DOD's costs. GAO recommended that DOD base premiums on actual costs and DOD has indicated its support for that approach consistent with available cost data.

Reference(s): GAO Report *Military Health Care: Cost Data Indicate that TRICARE Reserve Select Premiums Exceeded the Costs of Providing Program Benefits, GAO-08-104, December 2007* [http://www.gao.gov/new.items/d08104.pdf].

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

Active Duty End Strengths

Background: Continuing combat operations in Iraq and Afghanistan have stressed the nation's armed forces, especially the Army and Marine Corps. The FY2008 NDAA supported increasing the Army end strength by 65,000 to 547,400 by FY2012 and increasing the Marine Corps end strength by 27,000 to 202,000, also by FY2012. While the Army and Marine Corps grow, the Navy remains stable and the Air Force continues manpower reductions that began in 2005 to support the recapitalization of modernized aircraft. The Air Force is projected to reduce from 359,700 in FY2005 to approximately 300,000 in FY2009.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
Section 401 authorizes a FY2009 end strength of 532,400 for the Army, 326,323 for the Navy, 194,000 for the Marine Corps and 317,050 for the Air Force. Section 402 establishes new minimum end strengths of 532,400 for the Army, 326,323 for the Navy, 194,000 for the Marine Corps and 317,050 for the Air Force.	Section 401 authorizes a FY2009 end strength of 532,400 for the Army, 325,300 for the Navy, 194,000 for the Marine Corps and 316,771 for the Air Force. No similar provision.	Section 401 authorizes a FY2009 end strength of 532,400 for the Army, 326,323 for the Navy, 194,000 for the Marine Corps, and 317,050 for the Air Force. Section 402 authorizes new minimum end strengths of 532,400 for the Army, 325,300 for the Navy, 194,000 for the Marine Corps and 317,050 for the Air Force.

Discussion: The Army and Marine Corps have been successful, so far, in growing to meet the congressional goals. The Army plans to meet its ultimate goal of 547,400 by 2010, two years earlier than the congressional benchmark. The Secretary of Defense recently recommended that the Air Force end strength not fall below 330,000, a strength that has not yet been integrated into the FY2009 NDAA. The House version authorized 1,023 more Navy personnel and 450 more Air Force personnel above the budget request to restore military positions in the military medical community. The Senate committee version authorized 171 more Air Force personnel above the budget request to support the operation and maintenance on 76 B-52 aircraft.

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, 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 Employment Cost Index (ECI). The FY2009 President's Budget request for a 3.4 percent military pay raise was consistent with this formula. Congress, in FY2004, FY2005, FY2006, and FY2008 approved the raise as the ECI increase plus 0.5 percent. The FY2007 pay raise was equal to the ECI.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
Section 601 supports a 3.9 percent (0.5 percent above the President's Budget) across-the-board pay raise that would be effective January 1, 2009.	In Section 601, the Senate also supports a 3.9 percent pay raise to be effective on January 1, 2009.	Section 601 authorizes a 3.9 percent across-the-board pay increase effective January 1, 2009.
Section 608 requires a guaranteed pay raise of 0.5 percent above the ECI for FY2010 through FY2013.	No similar provision.	

Discussion: A military pay raise larger than the permanent formula is not uncommon. Mid-year, targeted pay raises (targeted at specific grades and longevity) have also been authorized over the past several years. This year's proposed 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.

Use of Reserve Component Personnel to Respond to Certain Domestic Disorders

Background: Chapter 15 of Title 10, sometimes referred to as the Insurrection Act, provides the President with the authority to call the militia into federal service and to use "the armed forces" to respond to certain domestic disorders, including aiding state governments in suppressing insurrection (10 USC 331), enforcing the laws of the United States and suppressing rebellion (10 USC 332), and preventing domestic violence which interferes with the execution of federal and state laws (10 USC 333).

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
Section 591 would amend 10 USC 331-333 to specify that the President's use of the "armed forces" under these provisions includes "units and members of the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve and Coast Guard Reserve ordered to active duty for this purpose."	No similar provision.	No language was included.

Discussion: The amendments contained in Section 591 of the H.R. 5658 would specify that the President's authority to use the armed forces to respond to these domestic disorders includes the ability to activate members of the federal reserve components (Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, and Coast Guard Reserve) and use them as part of the response effort. Activation of the Army National Guard and Air National Guard is already provided for under the original language authorizing the President to order the militia into federal service (the militia includes, but is not limited to, the National Guard).[1]

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

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

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[1] 10 USC 311(a) defines the militia as follows: "The militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age, who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are members of the National Guard." 10 USC 311(b) divides the militia into the organized militia (members of the National Guard and Naval Militia) and the unorganized militia (those members of the militia who are not members of the National Guard or the Naval Militia).

Use of Reserve Component Personnel to Respond to Certain Disasters or Emergencies

Background: Section 12304 of Title 10 allows the President to activate certain reservists for a period of up to 365 days for specified purposes. This authority is commonly referred to as Presidential Reserve Call-up (PRC) authority. A subparagraph of section 12304 prohibits the President from using this authority for "providing assistance to either the Federal Government or a State in time of a serious natural or manmade disaster, accident, or catastrophe," unless responding to an certain emergencies involving weapons of mass destruction or terrorist attacks.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
Section 594 would amend 10 USC 12304 to allow the President to order Selected Reserve units from the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve to active duty to assist in the response to certain disasters or emergencies.	No similar provision.	No language was included.

Discussion: Section 594 of H.R. 5658 would allow the President to use PRC authority to activate Selected Reserve units from the purely federal reserve components (but not the National Guard) to respond to disasters or emergencies which met the definitions of the Stafford Act.[2] A somewhat similar provision was passed as part of the John Warner National Defense Authorization Act for FY2007 (P.L. 109-364, section 1076); however, among other differences, it applied to the National Guard as well as the federal reserves and was opposed by many state governors. It was later repealed by section 1068 of P.L. 110-181.

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

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

[2] See 42 USC 5122 for these definitions.

*Continuation of Authority to Assist Local Education Agencies that Benefit Dependents of Members of the Armed Forces and Department of Defense Civilian Employees

Background: Last year Congress authorized $30 million for continuation of assistance to eligible local agencies impacted by enrollment of DOD military and civilian employee dependents, and $10 million for assistance to agencies with significant changes due to base closures, force structure changes, or force relocations.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
Section 571 of the House bill asks for 'impact aid' of $50 million for local educational agencies and $15 million to those with significant changes due to base closures, force structure changes, or force relocations.	Section 561 of the Senate bill calls for $30 million for local agencies to be authorized in 'impact aid' and $10 million for those with significant changes due to base closures, force structure changes, or force relocations. Section 562 would authorize $5 million in 'impact aid' for educational agencies that benefit children with severe disabilities.	Section 551 authorizes $35 million in 'impact aid' for local agencies and $15 million to local educational agencies where significant changes in enrollment are expected due to base closures, force structure changes or force relocations. Section 552 is identical to the Senate provision.

Discussion: The language contained in the final version of S. 3001 is similar to last year's efforts regarding impact aid.

Reference(s): CRS Report RL34169, *The FY2008 National Defense Authorization Act: Selected Military Personnel Policy Issues*, p. 7-8.

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

Authority for Educating and Training for Military Spouses Pursuing Portable Careers

Background: Military families are relocated quite frequently during a military career. Non-military spouses seeking employment at a new duty location are often frustrated because many of the skills they have may not be portable to a new location. Often, work skills must be learned anew. It has been reported that local employers prefer a more stable workforce with less turnover and less training needed.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
The House bill contained a provision (Sec. 582) that would authorize the Secretary of Defense to establish programs to assist the spouse of an active duty service member to receive education/training or credit required for a degree, credential, or licensing. The provision would also authorize tuition assistance.	Section 571 amends 10 USC 1784 ("Employment opportunities for military spouses") by adding language allowing the Secretary of Defense to carry out programs to provide or make available to eligible spouses education and training to facilitate the pursuit of a portable career.	Section 582 "includes the House provision with an amendment that would clarify that these programs may be used to enable a spouse to pursue a portable career, and would clarify the definition of portable career." (Joint Explanatory Statement, p. 68)

Discussion: Although this language is permissive in nature, if implemented, spouses may be more likely to continue a career following relocation to a new duty station.

Reference(s): None.

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

Career Intermission Pilot Program

Background: Each service supports educational programs that permit selected members to temporarily attend civilian educational institutions and then return to the parent service without interrupting their normal career pattern. However, there is currently no program that allows an extended break in service for personal or professional reasons.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
Section 532 would authorize a pilot program that allows a Service Secretary to release selected personnel from active duty for a maximum period of three years to pursue personal and professional goals. Up to 20 officer and 20 enlisted members annually from each armed force under the Secretaries jurisdiction could participate in this program during the period January 1, 2009 through December 31, 2014. Members would incur a service obligation of two months for every month of program participation. Participants and their families would remain eligible for medical and dental care and access to military facilities.	Section 585 would authorize a similar program. Interim reports would be required in 2010 and 2012 with a final report in 2015.	Section 533 authorizes a "Career Flexibility" pilot program. Participation is limited to 20 enlisted personnel and 20 officers per service per year. Service members will leave active duty for a period up to three years and return in the same grade and years of service that they held when inactivated. Time in the program does not count for retirement eligibility, retired pay or years of service. Pilot program begins on January 1, 2009 and ends on December 31, 2014. Interim reports are required in 2010 and 2012 with a final report on March 1, 2015.

Discussion: These programs, called "Career Intermission" in the House report and "Career Flexibility" in the Senate committee version, are aimed at enhancing retention by allowing personnel an opportunity to pursue other personal or professional goals. The House and Senate programs would be capped at 40 service members per year for each armed force and require a service obligation of two months for every month of program participation.

Reference(s): None

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

Incentives for Foreign Language Proficiency and Foreign Cultural Studies

Background: In recent years, both Congress and the Department of Defense have shown significant interest in increasing the ability of military personnel to operate in foreign countries by enhancing their cultural knowledge and foreign language proficiency. However, building these language and cultural skills has proven challenging due to the intensive study required for mastery and the competing demands of other training and operational requirements for currently serving personnel. There is currently statutory authority to provide bonuses to those who are already proficient in designated foreign languages (37 USC 316), but not for those who are seeking to become proficient.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
Section 619 would amend 37 USC 353 to allow the Service Secretaries to pay a proficiency bonus of up to $12,000 per year to regular or reserve personnel, and to those enrolled in an officer training program, who are "in training to acquire proficiency in a critical foreign language or expertise in foreign cultural studies or a related skill designated as critical by the Secretary concerned." It also allows the Service Secretaries to provide those in officer training programs who pursue such studies with up to $1,000 per month in incentive pay. It mandates that the Secretary of Defense establish a pilot program through 2013 to offer bonuses to reservists who pursue such studies.	Section 619 would add section 316a to Title 37. It would authorize the Secretary of Defense to provide up to $3,000 per year to participants in the Senior Reserve Officers Training Corps and the Marine Corps Platoon Leaders Class who participate "in a language immersion program approved for purposes of the Senior Reserve Officer's Training Corps, or in study abroad, or is enrolled in an academic course that involves instruction in a foreign language of strategic interest to the Department of Defense...." This section also contains a provision to recoup such payments if the individual does not complete participation in the language program or the pre-commissioning program.	Section 619 incorporates the language of both the House and Senate provisions.

Discussion: Section 619 of the original House-passed and Senate-passed bills both sought to improve the language skills of new officer accessions by giving them a financial incentive to study foreign languages and cultures before they begin active service. The original House provision would have also required the Secretary of

Defense to establish a pilot program for currently serving reserve personnel who undertake such studies, and it permits the Service Secretaries to use such financial incentives for currently serving active and reserve personnel who pursue such studies. The original House-passed language also had a higher maximum payment cap. The final version of S. 3001 combines both of these provisions, resulting in three distinct options (one bonus authority and two incentive pay authorities) for compensating individuals who seek to acquire foreign language proficiency or cultural skills. Existing provisions of law (37 USC 353(b) and 371(b)) would prevent an individual from receiving more than one proficiency bonus or incentive pay at a time for the same period of service and skill.

Reference(s): None.

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

Travel Allowances for Family of Service Members with Serious Psychiatric Conditions

Background: Section 411h of Title 37, U.S.C., authorizes the military departments to pay travel and transportation allowances for family members of service members who are seriously injured, seriously ill, or in a situation of imminent death when the appropriate authority (physician, commander of the military medical facility concerned, for example), determines that the family's presence may contribute to the service member's health or welfare.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
No similar language.	The committee report (p. 346-7) notes: "The committee strongly believes that service members who suffer from serious psychiatric conditions meet the seriously injured or seriously ill threshold under section 411h of title 37, United States Code, and that family members should be afforded travel and transportation allowances in accordance with that section. The committee directs the Secretary of Defense to report to the congressional defense committees by June 1, 2008 on the Department of Defense policies regarding the eligibility of family members of such service members to receive travel and transportation allowances under that section."	No language was included.

Discussion: This Senate report language makes no change in law but suggests that the Secretary of Defense broaden the current travel and transportation policy for family members of those with serious psychiatric conditions.

Reference(s): None.

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

Limitation on Simultaneous Deployments to Combat Zones of Dual-Military Couples who have Minor Dependents

Background: Section 586 of the National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181) contains the following provision: "The Secretary of Defense shall 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 under section 310 of title 37, United States Code. Such procedures should allow the member to request a deferment of deployment due to unforeseen circumstances, and the request for such a deferment should be considered and responded to promptly."

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
Section 596 would remove the second sentence of the above cited legislation, and specify that "In the case of a member of the Armed Forces with minor dependents who has a spouse who is also a member of the Armed Forces, and the spouse is deployed in an area for which imminent danger pay is authorized under section 310 of title 37, United States Code, the member may request a deferment of a deployment to such an area until the spouse returns from such deployment."	No similar provision.	No language was included.

Discussion: Under the change proposed in H.R. 5658, a military member with minor children who has a spouse already serving in an imminent danger pay area and facing simultaneous deployment may request a deferment to such an area until the spouse returns from such a deployment, regardless of the existence, or lack thereof, of "unforeseen circumstances."

Reference(s): None.

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

Sole Surviving Sons and Daughters

Background: The Department of Defense defines sole survivors as the only remaining son or daughter in a family where the father or mother, or one or more sons or daughters, while serving in the Armed Forces, was killed, died as a result of wounds, is captured or missing, or is permanently 100% disabled. Sole survivors may voluntarily enlist if they waive their right to separation as a sole surviving son or daughter but may apply for a protective assignment which precludes their assignment to an overseas area designated as a hostile-fire or imminent danger area. Enlisted service members who become sole survivors after entering the service may apply for separation.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
No similar provision.	Section 651 authorizes separation pay, transitional health care, commissary, and exchange privileges for service members voluntarily separated as surviving sons and daughters.	No language was included, as similar language was included in the Hubbard Act (P.L. 110-317) which as enacted on August 29, 2008.

Discussion: The administrative discharge of a sole survivor is considered a voluntary separation. Under current policy, if the separation occurs prior to the completion of the initial enlistment, there are no benefits associated with the discharge. Section 651 of the Senate bill would authorize certain benefits, typically associated with involuntary separations, for sole surviving sons and daughters who elect to separate.

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

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

Revised Disability Pay Computation Formula for Reserve Component Personnel Wounded in Action

Background: National Guard and Reserve personnel who qualify for disability retirement or placement on the temporary disability retired list (TDRL) have their disability retired pay calculated using a formula that factors in "years of service" or disability rating, whichever is more favorable to the service member. However, unlike regular component personnel – who are on duty every day of the year and receive a year of service for each year of duty -- reserve component personnel, who normally serve part-time, have their years of service calculated using a more complex formula based on their level of participation. This method sums up a reservist's participation "points"[3] and divides by 360 to produce the number of equivalent years of active-duty service. Given the less-than-full-time nature of reserve service, this means that an individual who has been serving in the reserves for 20 years may only have four or five years of service for retired pay computation purposes.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
Section 641 would amend 10 USC 1208 so that reserve component personnel who qualify for disability retirement or placement on the TDRL due to an disability for which a Purple Heart was awarded, shall have their years of service calculated under 10 USC 12732 rather than 10 USC 12733.	No similar provision.	No language was included.

Discussion: Section 641 of H.R. 5658 would have modified the method of calculating "years of service" for reservists who become eligible for disability retirement or are placed on the TDRL based on a combat-related injury. Rather than using the reservist's participation points to calculate active-duty equivalent years of service, as is currently done, this provision would have awarded a year of service for each year in which a reservist met the minimum participation standard of 50 points. Hence, under this provision, a reservists with 20 qualifying years of reserve service would have been awarded 20 years of service for his disability retired pay computation. It would have benefitted some combat-injured reservists, particularly those with a modest disability rating (30-40%) but many years of reserve service.

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

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

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[3] For more information on reserve retirement points, see CRS Report RL30802, p. 14-15.

Searchable Military Decorations Database

Background: The House Committee notes that there have been a number of recent incidents in which individuals have fraudulently claimed to have been awarded the Congressional Medal of Honor or other decorations of valor. The committee believes that false claims reduce the prestige of these decorations and that the valor of these decorations could be preserved if the general public had access to a searchable database listing individuals and the decorations for valor they have been awarded.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
This report language directs the Secretary of Defense to study the potential for establishing a searchable database listing individuals who have been awarded medals for valor. Topics considered should include cost, administrative challenges, options of public access, as well as issues concerning the privacy of those listed. The study should consider the feasibility of listing recipients of multiple valor decorations, but at a minimum, report the feasibility of a database listing only Medal of Honor recipients. The Secretary of Defense is directed to report the findings and recommendations to HASC and SASC by March 31, 2009.	No similar provision.	No language was included.

Discussion: The House bill's report language is exploratory in nature. It is expected that this would discourage false claims as such a list would allow for easy verification of their validity. Such a database may raise privacy issues.

Reference(s): None.

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

Award of the Vietnam Service Medal To Veterans Who Participated in the Mayaguez Rescue Operation

Background: On May 12, 1975, in the aftermath of the Vietnam War (approximately two weeks after the fall of Saigon), a U.S. merchant ship, S.S. Mayaguez, was seized by the Khmer Rouge Navy. Thirty-nine sailors were captured and taken to the island of Koh Tang. A rescue operation was mounted and the battle began on May 15. By most accounts, the result was a failure with four U.S. helicopters shot down or disabled and 41 Marines killed. Ironically, the number killed outnumbered the number of sailors captured by the Khmer Rouge. Shortly thereafter, all 39 sailors were released.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
Section 565 states "The Secretary of the military department concerned shall, upon application of an individual who is an eligible veteran [as defined], award that individual the Vietnam Service Medal, notwithstanding any otherwise application requirements for the award of that medal. Any such award shall be made in lieu of any Armed Forces Expeditionary Medal awarded the individual for the individual's participation in the Mayaguez rescue operation."	No similar provision.	No language was included.

Discussion: This language in H.R. 5658 would authorize the Vietnam Service Medal for participants in the Mayaguez rescue. It is not clear what other benefits, if any, would accrue from recognizing these individuals in this manner.

Reference(s): None.

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

Protective Orders

Background: Chapter 80 of Title 10 United States code is concerned with "Miscellaneous Investigation Requirements and Other Duties." It includes provisions concerning complaints of sexual harassment, civilian orders of protection and domestic violence data.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
Section 552 amends Chapter 80 of Title 10 to specify that a protective order issued by a military commander remains a standing order until the incident has been resolved by investigation, courts martial or other command determined adjudication, or a new order is issued.	No similar provision.	Section 561amends Chapter 80 of Title 10 to specify that "A military protective order issued by a military commander shall remain in effect until such time as the military commander terminates the order or issues a replacement order."
Section 553 amends Chapter 80 of Title 10 to state that if a military protective order is issued against a military member and any individual involved in the order does not reside on a military installation, the commander of the military installation must notify appropriate civilian authorities of the issuance of the order, the duration of the order, and the individuals involved.	No similar provision.	Section 562 amends Chapter 80 of Title 10 to state that if a military protective order is issued against a military member and any individual involved in the order does not reside on a military installation, the commander of the military installation must notify appropriate civilian authorities of the issuance of the order, the individuals involved, any changes to the order, and termination of the order.

Discussion: The intent of these provisions is to maintain a protective order until it has been officially resolved and to ensure that civilian authorities are aware of such orders when the individual(s) involved do not reside on a military installation.

Reference(s): None.

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

*Implementation of Information Database on Sexual Assault Incidents in the Armed Forces

Background: Over the years reports of sexual assault involving military personnel have brought about a number of reforms, including changes in the Uniformed Code of Military Justice, training, and creation of the Defense Incident Based Reporting System which tracks criminal acts, especially sex crimes, and reports these data to the Justice Department.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
Section 554 of the House bill contains language requiring the Secretary of Defense to implement a centralized, case-level database of information regarding sexual assaults. This database builds on earlier congressionally mandated reporting requirements.	No similar provision.	Section 563 adopted the House language with an amendment requiring the Secretary of Defense to submit a report which contains "a description of the current status of the Defense Incident-Based Reporting System" and an explanation of how the Defense Incident-Based Reporting System will relate to the new sexual assault database required by this section.

Discussion: This language would provide more centralized, more detailed and arguably better reporting of sexual assault incidents in the Armed Forces.

Reference(s): None.

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

Paternity Leave for Members of the Armed Forces

Background: At present, when a member of the armed forces becomes the father of a child and wishes to take time off for paternity purposes, he uses his regular leave. Such leave accumulates at the rate of 2 ½ days per month of active service.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
No similar provision.	Section 583 of the Senate bill modifies Chapter 40 ("Leave") section 701 ("Entitlement and accumulation") of Title 10 to afford a member of the armed forces who is the husband of a woman who gives birth to a child up to 21 days of leave to be used in connection with the birth of the child.	Section 532 amends section 701 of Title 10 to provide that "Under regulations prescribed by the Secretary concerned, a married member of the armed forces on active duty whose wife gives birth to a child shall receive 10 days of leave to be used in connection with the birth of the child."

Discussion: The language in the final version would provide a new type of leave for paternity purposes, which would be in addition to the service member's regular leave. It would apply only to children born on or after the date of enactment.

Reference(s): None.

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

Presentation of Burial Flag to the Surviving Spouse and Children of Members of the Armed Forces who Die in Service

Background: Under 10 USC 1482(a), when a member of the armed forces dies in service, a burial flag is presented to the person designated to direct disposition of the remains and to the parents of the service member.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
Sec 581 of the House report would amend 10 USC 1482 to allow the Service Secretary to pay the expenses necessary to provide a ceremonial burial flag to a surviving spouse (including a remarried surviving spouse), if the person authorized to direct the disposition of remains is other than a spouse.	Section 641 of the Senate bill would amend 10 USC 1482 to allow the Service Secretary to pay the expenses necessary to provide a ceremonial burial flag to the surviving spouse (including a remarried surviving spouse), if the person authorized to direct the disposition of remains is other than the spouse, and to each surviving child.	Section 581 amends 10 USC 1482 to authorize the Secretary concerned to pay the expenses necessary to provide a flag to the surviving spouse of a deceased servicemember (including a remarried surviving spouse), if the person authorized to direct the disposition of remains is other than the spouse, and to each surviving child.

Discussion: The House and Senate-passed bills both proposed authorizing the provision of a burial flag to a surviving spouse if someone else is authorized to direct the disposition of remains; the Senate-passed bill also allowed for providing a flag to the surviving children of the decedent. The final version of the bill permits a burial flag to be presented to the surviving spouse and each surviving child.

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

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

Secretary of Defense Review of the Deferment from Deployment Policy following the Birth of a Child

Background: Current DOD policy requires a minimum of four months following the birth of a child before a military mother can be assigned to a dependent-restricted or unaccompanied tour. The Secretary of the military department has the authority to extend that time. The Army and the Air Force provide a minimum of four months, while the Marine Corps defers for six months and the Navy for up to one year.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
No similar provision.	The committee report (p. 341) directs the Secretary of Defense to review the policies concerning such deployments. The review shall take into account readiness, recruitment and retention of female service members, and consider differing deployment and manpower needs, family care plans, psychological readiness of the member for deployment, and personal hardship (such as a newborn with special medical needs). The Secretary is directed to contact outside experts. The committee directs the Secretary to report to HASC and SASC by May 1, 2009	No language was included.

Discussion: The Senate report directs the Secretary of Defense to describe changes to DOD or service policies as the result of this review.

Reference(s): None.

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

Effect of Termination of Subsequent Marriage on Payment of Survivor Benefit Plan Annuity to Surviving Spouse or Former Spouse who Previously Transferred Annuity to Dependent Children

Background: The Survivor Benefit Plan (SBP) provides annuities to the surviving spouse, children, former spouse, or spouse/former spouse and children. If a spouse or former spouse remarries before age 55, SBP annuities cease. Children remain eligible until age 18 or 22, if a full-time student. An eligible child who marries loses SBP. If a spouse is eligible to receive benefits under the Veterans Affairs Dependency and Indemnity Compensation (DIC), the SBP is offset or reduced on a dollar- for-dollar basis. A surviving spouse of a service member killed in the line of duty is eligible to receive both SBP and DIC. To avoid the offset, Congress allowed survivors in this example to designate their children as SBP beneficiaries, allowing the surviving spouse to receive VA's DIC.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
Section 642 would amend 10 USC 1450(b)(3) by adding this sentence at the end: "The payment of an annuity to a surviving spouse or former spouse under this paragraph shall be resumed even though the surviving spouse or former spouse previously transferred the annuity to a child or children under section 1448(d)(2)(B) of this title if, when the marriage is so terminated, the child or children, due to loss of dependent status, death, or other cause, are no longer eligible for the annuity under such section.''	No similar provision.	No language was included.

Discussion: Essentially, this House language would return eligibility for SBP to a surviving spouse or former spouse, who allowed the dependent child or children to be designated as SBP beneficiaries to avoid the SBP/DIC offset, following the termination of the remarriage and the end of eligibility for the child or children.

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, x7-8033.

*Extension to Survivors of Certain Members who Die on Active Duty of Special Survivor Indemnity Allowance for Persons Affected by Required Survivor Benefit Plan Annuity Offset for Dependency and Indemnity Compensation

Background: A Survivor Benefit Plan (SBP) eligible spouse who is eligible for Dependency and Indemnity Compensation will have his or her SBP reduced or offset on a dollar-for-dollar basis by Dependency and Indemnity Compensation (see previous page). For certain beneficiaries affected by the offset, section 644 of the National Defense Authorization Act for Fiscal Year 2008, created a new survivor indemnity allowance to be paid to survivors of service members who are 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. This monthly allowance, effective October 1, 2008, would be $50, and would increase annually by $10 through FY2013.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
Section 643 would extend the special survivor indemnity allowance for offset-effected survivors of active duty members. Note: This special survivor indemnity allowance is an additional benefit and does not represent a repeal of the SBP/DIC offset.	No similar provision.	Section 631 adopts the House provision.

Discussion: This final version of S. 3001 provides additional benefits to offset-affected survivors of active duty service members.

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, x7-8033.

Enhanced Enforcement of Prohibition on Sale or Rental of Sexually Explicit Material on Military Installations

Background: The National Defense Act for Fiscal Year 1997 (P.L. 104-201, September 23, 1996, 110 Stat. 2489) contained language that prohibited the sale of sexually explicit material on military installations. An eight-member board (Resale Activities Board of Review) was established to review materials for resale. Once the board determined that an item was 'sexually explicit,' it was removed and not available for resale or rental on military installations. The review board reviewed 473 titles in 1998 and determined 319 to be sexually explicit. In May, 2006, the board reversed its decision with regard to Playgirl and Penthouse. A Christian group (Alliance Defense Fund) wrote a letter to Secretary of Defense Robert Gates protesting the sale of these and other items.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
Section 654 would amend 10 USC 2495b to establish a new nine-member "Resale Activities Review Board" not later than 120 days after the enactment of this act. The Board would be required to meet within one year after the date of appointment and may consider all materials previously reviewed.	No similar provision.	Section 642 adopts the House language.

Discussion: The House language would re-establish the existing review board and modifies its composition. Its intent grew out of efforts to ban particular items for rental or resale. This provision was included in the final version.

Reference(s): None.

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

Junior Reserve Officers' Training Corps (JROTC)

Background: JROTC is a federal program sponsored by the Armed Forces in high schools to instill the values of citizenship, service to the nation, personal responsibility and a sense of accomplishment. Current law does not establish a minimum or maximum number of JROTC programs for the Department of Defense or the Services.[4] However, there are approximately 3,300 JROTC units currently operating in high schools and overseas in the Department of Defense School System.

Original House-passed version (H.R. 5658)	Original Senate-passed version (S. 3001)	Final version (S. 3001)
Section 547 supports the expansion of JROTC to 4,000 units by 2020. It also requires DOD to submit a report to the defense committees by March 31, 2009 on how the services will achieve this goal.	No similar provision.	Section 548 authorizes the expansion of JROTC to 3,700 units by 2020. Requires the Secretary of Defense to submit a report to the defense committees by March 31, 2009 on how the services will achieve this goal.

Discussion: JROTC was created in 1916 and the program has been expanded several times. While generally viewed as a positive influence on high school youth, some have criticized the program as a military recruiting tool for the Services or a program that tends to militarize schools.

Reference(s): None.

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

[4] In 1992, Congress established the maximum number of JROTC units at 3,500. However, this statutory limit was rescinded by Section 534 of the FY2001 National Defense Authorization Act.