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# **FY2021 National Defense Authorization Act: Selected Personnel and Health Care Issues**

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## **FY2021 National Defense Authorization Act: Selected Personnel and Health Care Issues**

The National Defense Authorization Act (NDAA) authorizes appropriations for a wide range of national security programs and activities within the Department of Defense (DOD) and other executive agencies. Congress typically includes organizational reform, new or modified defense policies, and directed reports or studies among the legislation's provisions.

For FY2021, the House-passed (H.R. 6395) and Senate-passed (S. 4049) bills sought to implement or supplement various categories of personnel and health care matters related to servicemembers, maritime personnel, servicemember families, and DOD civilian employees. Certain provisions address annual authorizations of military personnel end-strengths, others affect existing program authorities, and some are novel personnel and healthcare programs. The legislative process for these two bills culminated on January 1, 2021, when the FY2021 NDAA became P.L. 116-283 after Congress voted to override a Presidential veto.

The active duty military personnel end-strengths authorized in the FY2021 NDAA are 485,900 for the Army, 347,800 for the Navy, 181,200 for the Marine Corps, and 333,475 for the Air Force (inclusive of the Space Force). The FY2021 NDAA authorizes a 3.0% increase in military basic pay, consistent with the Administration's FY2021 budget request and the House and Senate-passed NDAA bills.

The FY2021 NDAA included several provisions that seek to enhance oversight of diversity and inclusion issues in DOD and establish various initiatives meant to improve diversity and inclusion in DOD. Military justice and criminal investigations matters in the FY2021 NDAA focus on sex-related offenses and protecting military family members.

Several provisions in the FY2021 NDAA address military family matters, such as family readiness, military spouse education and employment, military childcare programs, and military parental leave.

The FY2021 NDAA includes a number of provisions that delay or clarify certain congressionally directed or DOD-initiated reform efforts for military health system administration. There are also provisions meant to enhance Congress's understanding of DOD's health care billing practices and provide authority to waive certain billing requirements. Other provisions in the FY2021 NDAA address mental health issues affecting servicemembers, veterans, and family members. There are eight general mental health assessment, funding, and reporting provisions, two substance abuse-related provisions, three suicide-related provisions, and nine reserve component-related provisions.

A significant difference in both NDAA bills from prior versions is the inclusion of COVID-19 specific provisions. These address personnel, health care, and public health issues that arose during DOD operations supporting the national response to the COVID-19 pandemic. The various provisions are intended to:

- Authorize hazardous duty pay for military personnel responding to the pandemic.
- Grant constructive retirement credit for certain reservists unable to complete required annual training.
- Require a report to Congress on how full-time National Guard pandemic response duty is determined.
- Require quarantine housing for National Guard members upon completion of pandemic response duty.
- Direct a study on financial hardships among servicemembers during the COVID-19 pandemic.
- Establish a military health systems review panel to examine the system's response to COVID-19.
- Require a strategy for DOD pandemic response and preparedness and a related health system study.
- Require a registry of TRICARE beneficiaries diagnosed with COVID-19 and a related report to Congress.
- Require DOD to print information for distributed pandemic materials in languages other than English.
- Extend health care eligibility for certain National Guard members after full-time pandemic response duty.

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## Introduction

The United States Constitution grants authority to Congress and the President to provide for the common defense of the nation. All Department of Defense (DOD) policy, activities, and operations originate from this shared authority. DOD implements legislative and presidential delegated authority through orders, directives, regulations, and instructions, or similar administrative acts.

Congress exercises its national defense authority through DOD primarily, but also through the intelligence community and other executive agencies with national security functions.<sup>1</sup> Congress gives the Secretary of Defense military authority through statutes that prescribe specific duties and responsibilities or authorize the general authority needed to conduct national defense affairs.

The House and Senate armed services committees (HASC and SASC) traditionally consider fiscal year (FY) national defense authorization act (NDAA) bills annually. **Table 1** lists certain legislative actions for the FY2021 House-passed (H.R. 6395) and Senate-passed (S. 4049) bills. Specific provisions in the NDAA bills are often similar or identical in both versions of the authorization bills. Alternatively, provisions can be included in one version, but not the other, or be in both in substantively dissimilar forms.

At some point after passage of each chamber’s authorization bill, the House and Senate usually form a conference committee to resolve the differences between the two chambers. Should the conference committee resolve differences, the committee would issue a conference report for each chamber to consider.

**Table 1. House and Senate Passed FY2021 NDAA Bills**  
Selected Legislative Actions

H.R. 6395	Date of Action	S. 4049	Date of Action
P.L. 116-283	01/01/2021	Received in the House	08/07/2020
Senate passed over veto	01/01/2021	Passed in the Senate	07/23/2020
House passed over veto	12/28/2020	Reported by the SASC	06/24/2020
Vetoed by President	12/23/2020		
Presented to President	12/11/2020		
Passed in the Senate	11/16/2020		
Received in the Senate	08/04/2020		
Passed in the House	07/21/2020		
Reported by the HASC	07/09/2020		

**Source:** H.R. 6395 actions at <https://www.congress.gov/bill/116th-congress/house-bill/6395/actions>; S. 4049 actions at <https://www.congress.gov/bill/116th-congress/senate-bill/4049/actions>.

<sup>1</sup> The Constitution provides that Congress shall have power to: provide for the common defense; declare war; raise and support armies; provide and maintain a navy; make rules for the government and regulation of the land and naval forces; provide for calling forth the militia; provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; and make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof (Article I). See also CRS In Focus IF11566, *Congress, Civilian Control of the Military, and Nonpartisanship*, by Kathleen J. McInnis.

An NDAA contains provisions that affect individuals who are serving in the Armed Forces, and their families, as well as those who are retired from military service and those who are employed in DOD. This CRS report considers selected personnel and health care provisions that were proposed in the authorization bills and examines those selected provisions that Congress enacted into law (P.L. 116-283). The report's analysis and information is presented in five general topic sections that contain specific subsections with selected personnel or health care issues. A subsection's author and CRS point of contact are identified and, if available, CRS products that are relevant to these specific issues are noted.

## Military Personnel

The HASC and SASC have jurisdiction over DOD policy and programs addressed in the FY2021 NDAA that are related to military personnel, retirement, and compensation, including Coast Guard personnel.<sup>2</sup> They also oversee military justice matters that are part of the Act's Uniform Code of Military Justice (UCMJ) provisions.

### Active Duty Authorized Strength

**Background.** The term "authorized strength" means the largest number of servicemembers authorized to be in an armed force, a component, a branch, a grade, or any other category of the armed forces.<sup>3</sup> The armed forces are the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard.<sup>4</sup> Congress authorizes such numbers each fiscal year for the end-strength of the armed forces, except the Coast Guard (*See "Coast Guard Active Duty Authorized Strength"* below).<sup>5</sup> The term "end strength" means the active duty personnel to be paid from funds appropriated for active-duty personnel, to include certain members of the Selected Reserve and National Guard serving on active duty. Such authorizations generally do not include the number of servicemembers in the Selected Reserve or National Guard that may be mobilized or federalized for active duty. Authorized active component end-strengths for the FY2020 NDAA, FY2021 President's Budget, and FY2021 NDAA are shown in **Table 2**.

After the withdrawal of U.S. forces from Iraq in 2011 and drawdown of forces from Afghanistan beginning in 2012, Congress began to reverse the trend of increasing end-strength levels that began in 2001. However, Congress halted further reductions in Army and Marine Corps end-strength in FY2017, providing slight end-strength increases for both Services that year. In FY2018 and FY2019, Congress again provided slight end-strength increases for the Marine Corps, while providing a more substantial increase for the Army. Though the Army did not reach its authorized end-strength of 483,500 in FY2018 or its authorized end-strength of 487,500 in FY2019, primarily due to missing its recruiting goals for enlisted personnel. End-strength for the Air Force generally declined from 2004 to 2015, but increased from 2016 to 2019. End-strength for the Navy declined from 2002 to 2012, increased in 2013 and remained essentially stable through 2017; it increased again in 2018 and 2019.

<sup>2</sup> U.S. Senate, *Document 113-18, Standing Rules of the Senate*, January 24, 2013, p. 20; U.S. House of Representatives, *Rules of the House of Representatives*, January 11, 2019, p. 6; *RCP 116-25, Rules Adopted by the Committees of the House of Representatives of the United States*, 116<sup>th</sup> Congress, 2019-2020, p. 37.

<sup>3</sup> 10 U.S.C. §101(b)(11).

<sup>4</sup> 10 U.S.C. §101(a)(4).

<sup>5</sup> 10 U.S.C. §115.

**Coast Guard Active Duty Authorized Strength<sup>6</sup>**

Military personnel authorizations for the Coast Guard reserve are included in the selected reserve end-strength provisions of the NDAA each fiscal year, but the authorizations for the Coast Guard's active duty personnel typically are not included. The FY2021 NDAA does however contain a separate Coast Guard authorization act that approves an active duty end-strength of 44,500 in the Coast Guard (*Elijah E. Cummings Coast Guard Authorization Act of 2020* (P.L. 116-283, §8102)).

**Table 2. Active Duty End Strength**  
FY2020 NDAA, FY2021 Budget Request, and FY2021 NDAA

Service	FY2020 NDAA	FY2021 Budget Request	FY2021 NDAA	NDAA Difference
Army	480,000	485,900	485,900	5,900
Navy	340,500	347,800	347,800	7,300
Marine Corps	186,200	184,100	181,200	-5,000
Air Force	332,800	333,700	333,475	675
<b>Total</b>	<b>1,339,500</b>	<b>1,351,500</b>	<b>1,348,375</b>	<b>8,875</b>

Source: CRS Analysis.

**Active Duty Authorized Strength Sectional Analysis**

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<b>Sec. 401</b> would authorize a total FY2021 active duty end-strength of 1,351,500 including 485,900 for the Army 347,800 for the Navy 184,100 for the Marine Corps 327,266 for the Air Force 6,434 for the Space Force	<b>Sec. 401</b> would authorize a total FY2021 active duty end-strength of 1,345,205 including 485,000 for the Army 346,730 for the Navy 180,000 for the Marine Corps 333,475 for the Air Force	<b>Sec. 401</b> authorizes a total FY2021 active duty end-strength of 1,348,375 including 485,900 for the Army 347,800 for the Navy 181,200 for the Marine Corps 333,475 for the Air Force

**Discussion.** The Administration's FY2021 budget requested end-strengths of 485,900 for the Army, 347,800 for the Navy, and 184,100 for the Marine Corps. In comparison to FY2020 authorized end-strengths, these requests represented increases for the Army (+5,900) and Navy (+7,300), and a decrease for the Marine Corps (-2,100).

The House-passed bill sought end-strengths that are identical to the Administration request for the Army, Navy, and Marine Corps. The Senate-passed bill sought end-strengths that are lower than the Administration request for the Army (-900 compared to the Administration request), Navy (-1,070), and Marine Corps (-4,100).

In the FY2020 NDAA, Congress authorized the establishment of the United States Space Force, a new armed force within the Department of the Air Force.<sup>7</sup> The Department of the Air Force

<sup>6</sup> Established in 1915, the Coast Guard is a military service in the Department of Homeland Security (DHS) and a branch of the armed forces of the United States. If directed by the President, or by Congress through a declaration of war, the Coast Guard transfers from DHS to the Department of Defense (DOD) and operates as a service in the Navy.

<sup>7</sup> P.L. 116-92, §§951-961.

currently assigns personnel to the Space Force, but in the future it will “will finalize the process by which personnel will be formally and permanently ‘transferred’ into the U.S. Space Force. Transfer describes the process whereby a military member is ‘sworn into’ a different branch of Service. Enlisted members take a new Oath of Enlistment, and Officers are provided a new Commission.

The Administration’s budget request proposed a total end-strength of 333,700 for the Air Force, of which 6,434 was allocated for the Space Force:

The Fiscal Year 2021 President’s Budget supports an increase of 900 Airmen to the all-volunteer force, increasing the total from 332,800 authorized in the FY 2020 National Defense Authorization Act to 333,700 requested in FY 2021 ... Inclusive of the 333,700 end strength, 6,434 military personnel are assigned and/or transferred to the operational United States Space Force.<sup>8</sup>

The House-passed version would have required separate end-strength authorizations for the Air Force (327,266) and Space Force (6,434), which together equal the Administration’s request for the Air Force (333,700). The Senate-passed provision would have authorized an Air Force end-strength (333,475) which is slightly lower than the Administration request (-225).

The Senate-passed version would have provided lower total end-strengths than the Administration request. The committee report that accompanied the bill described these reductions in the context of how the COVID-19 pandemic affected military recruiting and retention. It then noted:

Many of the assumptions utilized in determining the military’s fiscal year 2021 end strength request are no longer accurate.... Therefore, the committee has taken a cautious approach to the end strength authorization for active forces. This provision would authorize end strength levels within existing variance authority for the Army, Navy, and Air Force. Based on detailed modelling conducted by the Marine Corps, the committee would further reduce Marine Corps end strength by 4,100 compared to the budget request. The committee emphasizes that this provision does not signal a lack of support for the military’s end strength goals. If conditions improve throughout the summer and fall of 2020, the committee would support restoring end strength to the requested level.<sup>9</sup>

The FY2021 NDAA authorizes end-strengths of 485,900 for the Army, 347,800 for the Navy, 181,200 for the Marine Corps, and 333,475 for the Air Force (inclusive of the Space Force). The FY2021 NDAA conference report noted “The conferees expect the Department of the Air Force to submit a formal request and justification for [U.S. Space Force] end strength to the congressional defense committees as part of the President’s Department of Defense budget request for fiscal year 2022.”

**References:** See CRS Report R46107, *FY2020 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Bryce H. P. Mendez and similar reports from earlier years. Enacted figures for FY2020 found in P.L. 116-92.

**CRS Points of Contact:** Lawrence Kapp and Alan Ott (Coast Guard).

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<sup>8</sup> Department of the Air Force, *Fiscal Year (FY) 2021 Budget Estimate, Military Personnel Appropriation*, 2020, p. 6, at [https://www.saffm.hq.af.mil/Portals/84/documents/FY21/MILPER\\_FY21%20Air%20Force%20Military%20Personnel\\_1.pdf?ver=2020-02-10-091310-847](https://www.saffm.hq.af.mil/Portals/84/documents/FY21/MILPER_FY21%20Air%20Force%20Military%20Personnel_1.pdf?ver=2020-02-10-091310-847).

<sup>9</sup> S.Rept. 116-236, pp. 189-90.

## Selected Reserve Authorized Strength<sup>10</sup>

**Background.** The overall authorized end-strength of the Selected Reserves has declined by 7.6% since 2001 (874,664 in FY2001 versus 807,800 in FY2020). Authorized Selected Reserve end-strengths for the FY2020 NDAA, FY2021 President's Budget, and FY2021 NDAA are shown in **Table 3**. During this period, changes in authorized strength by reserve component were as follows: Navy Reserve (-29,900), Army Reserve (-15,800), Army National Guard (-14,526), Air Force Reserve (-4,258), Marine Corps Reserve (-1,058), Coast Guard Reserve (-1,000) and Air National Guard (-322).

**Table 3. Selected Reserve End-Strength**  
FY2020 NDAA, FY2021 Budget Request, and FY2021 NDAA

Reserve Component	FY2020 NDAA	FY2021 Budget Request	FY2021 NDAA	NDAA Difference
Army National Guard	336,000	336,500	336,500	500
Army Reserve	189,500	189,800	189,800	300
Navy Reserve	59,000	58,800	58,800	-200
Marine Corps Reserve	38,500	38,500	38,500	0
Air National Guard	107,700	108,100	108,100	400
Air Force Reserve	70,100	70,300	70,300	200
Coast Guard Reserve	7,000	7,000	7,000	0
<b>Total</b>	<b>807,800</b>	<b>809,000</b>	<b>809,000</b>	<b>1,200</b>

Source: CRS Analysis.

### Selected Reserve Authorized Strength Sectional Analysis

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<p><b>Sec. 411</b> would authorize a total FY2020 Selected Reserve end-strength of 809,000 including:</p> <ul style="list-style-type: none"> <li>Army National Guard: 336,500</li> <li>Army Reserve: 189,800</li> <li>Navy Reserve: 58,800</li> <li>Marine Corps Reserve: 38,500</li> <li>Air National Guard: 108,100</li> <li>Air Force Reserve: 70,300</li> <li>Coast Guard Reserve: 7,000</li> </ul>	<p><b>Sec. 411</b> would authorize a total FY2020 Selected Reserve end-strength of 809,000 including:</p> <ul style="list-style-type: none"> <li>Army National Guard: 336,500</li> <li>Army Reserve: 189,800</li> <li>Navy Reserve: 58,800</li> <li>Marine Corps Reserve: 38,500</li> <li>Air National Guard: 108,100</li> <li>Air Force Reserve: 70,300</li> <li>Coast Guard Reserve: 7,000</li> </ul>	<p><b>Sec. 411</b> authorizes a total FY2020 Selected Reserve end-strength of 809,000 including:</p> <ul style="list-style-type: none"> <li>Army National Guard: 336,500</li> <li>Army Reserve: 189,800</li> <li>Navy Reserve: 58,800</li> <li>Marine Corps Reserve: 38,500</li> <li>Air National Guard: 108,100</li> <li>Air Force Reserve: 70,300</li> <li>Coast Guard Reserve: 7,000</li> </ul>

**Discussion.** The Administration's FY2021 budget requested end-strengths of 336,500 for the Army National Guard, 189,800 for the Army Reserve, 58,800 for the Navy Reserve, 38,500 for

<sup>10</sup> 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.

the Marine Corps Reserve, 108,100 for the Air National Guard, 70,300 for the Air Force Reserve, and 7,000 for the Coast Guard Reserve.

In comparison to FY2020 authorized end-strengths, these requests represented increases for the Army National Guard (+500), Air National Guard (+400), Army Reserve (+300), and Air Force Reserve (+200), a decrease for the Navy Reserve (-200), and no change for the Marine Corps Reserve and Coast Guard Reserve.

The Administration request and the House-passed and Senate-passed bills for Selected Reserve end-strengths were identical. The FY2021 NDAA authorizes these end-strength levels.

**References:** See CRS Report R46107, *FY2020 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Bryce H. P. Mendez and similar reports from earlier years. Enacted figures for FY2020 found in P.L. 116-92. For more on the Reserve Component see CRS Report RL30802, *Reserve Component Personnel Issues: Questions and Answers*, by Lawrence Kapp and Barbara Salazar Torreon, and CRS In Focus IF10540, *Defense Primer: Reserve Forces*, by Lawrence Kapp.

**CRS Points of Contact:** Lawrence Kapp and Alan Ott (Coast Guard).

## Military Pay Raise

**Background.** Congress has a long-standing interest in military pay raises, as they impact the overall cost of military personnel and recruitment and retention of high-quality personnel serving in the all-volunteer military. Section 1009 of Title 37, U.S. Code, codifies the formula for an automatic annual increase in basic pay indexed to the annual increase in the Employment Cost Index (ECI). The statutory formula stipulates that the increase in basic pay for 2021 will be 3.0% 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 FY2021 President’s Budget requested a 3.0% military pay raise, equal to the amount from the statutory formula.

### Military Pay Raise Sectional Analysis

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<b>Sec. 601</b> specifies that basic pay will increase by 3.0% on January 1, 2021.	No similar provision	<b>Sec. 601</b> increases basic pay by 3.0% on January 1, 2021.

**Discussion.** Section 601 of the House-passed bill directs a 3.0% increase in basic pay. The Senate-passed bill does not contain a provision specifying an increase in basic pay, leaving in place the 3.0% automatic adjustment provided by 37 U.S.C. §1009. The FY2021 NDAA adopts the House provision’s 3.0% increase in basic pay.

**References:** See in CRS Report R46107, *FY2020 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Bryce H. P. Mendez and similar reports from earlier years. For an explanation of the pay raise process and historical increases, see CRS In Focus IF10260, *Defense Primer: Military Pay Raise*, by Lawrence Kapp. For additional information on military pay, see CRS Report RL33446, *Military Pay: Key Questions and Answers*, by Lawrence Kapp and Barbara Salazar Torreon.

**CRS Points of Contact:** Lawrence Kapp and Alan Ott (Coast Guard).

## Diversity and Inclusion (D&I)

**Background.** In the FY2009 NDAA, Congress authorized the creation of the Military Leadership Diversity Commission (MLDC).<sup>11</sup> Following that effort, in 2012, DOD developed and issued a five-year Diversity and Inclusion Strategic Plan for 2012-2017.<sup>12</sup> In the FY2020 NDAA, Congress required DOD to update and implement its strategic plan.<sup>13</sup> Since 2009, several DOD policy shifts have expanded career opportunities for women in submarine and ground combat roles, and have altered conditions for service of transgender servicemembers. The implementation of these policies and the DOD’s integration of demographically diverse groups remains an area of congressional interest and oversight.

### D&I Sectional Analysis

House-Passed H.R. 6395	Senate Passed S. 4049	P.L. 116-283
<p><b>Sec. 571</b> would amend diversity and inclusion reporting requirements under 10 U.S.C. §113 to include strategic metrics/benchmarks.</p> <p><b>Sec. 572</b> would establish a statutory requirement for a DOD Diversity and Inclusion Advisory Council under 10 U.S.C. §186.</p> <p><b>Sec. 575</b> would require an annual report on demographics of officers appointed to certain grades.</p> <p><b>Sec. 1785</b> would require the military departments to share best practices and lessons learned in the integration of minority groups.</p> <p><b>Sec. 1786</b> would require DOD policy to define and eliminate conscious and unconscious gender bias.</p>	<p><b>Sec. 520</b> would require DOD to report to Congress on the findings of a recently created defense board and advisory committee for diversity issues.</p>	<p><b>Sec. 551</b> adopts elements of several House provisions and Senate Section 520 under a consolidated D&amp;I initiative. It requires DOD to produce annual, publicly available D&amp;I reports that include certain standardized reporting criteria and metrics. It also requires coordination across the military department. It also requires annual meetings between the Secretaries of the military departments to assess progress toward D&amp;I goals.</p>
<p><b>Sec. 502</b> would require DOD to ensure diversity in the membership of selection boards.</p>	<p>No similar provision</p>	<p><b>Sec. 503</b> adopts the House provision, amending 10 U.S.C. §612(a)(1), 10 U.S.C. §573(b), and 10 U.S.C. §14102(b).</p>
<p><b>Sec. 503</b> would require DOD to redact personally identifiable information in promotion boards.</p>	<p>No similar provision</p>	<p><b>Sec 524</b> adopts the House provision and requires DOD to submit a report to Congress with recommendations on further redactions that could eliminate bias in the selection process.</p>
<p><b>Sec. 912</b> would establish the positions of Chief Diversity Officer for DOD and each military department under 10 U.S.C. §146.</p>	<p>No similar provision</p>	<p><b>Sec. 913</b> adopts the House provision for a DOD Chief Diversity Officer and includes certain qualifications for the position. It requires the military departments and the commandant of</p>

<sup>11</sup> P.L. 110-417.

<sup>12</sup> DOD, Diversity and Inclusion Strategic Plan, 2012-2017, at [https://diversity.defense.gov/Portals/51/Documents/DoD\\_Diversity\\_Strategic\\_Plan\\_%20final\\_as%20of%2019%20Apr%2012%5B1%5D.pdf](https://diversity.defense.gov/Portals/51/Documents/DoD_Diversity_Strategic_Plan_%20final_as%20of%2019%20Apr%2012%5B1%5D.pdf)

<sup>13</sup> P.L. 116-92 §555.

House-Passed H.R. 6395	Senate Passed S. 4049	P.L. 116-283
		the Coast Guard to appoint senior advisors for D&I.
<b>Sec. 573</b> would establish an office of the Special Inspector General for Racial and Ethnic Disparities in the Armed Forces.	No similar provision	<b>Sec. 554</b> creates the position of Deputy Inspector General for oversight of D&I programs and policies in the Armed Forces and requires tracking and reporting of supremacist, extremist, and criminal gang activity.
<b>Sec. 518</b> would authorize a 5-year pilot program in connection with Senior Reserve Officers' Training Corps (SROTC) units at Historically Black Colleges and Universities and Minority Serving Institutions including financial assistance for flight training.	<b>Sec. 546</b> is a similar provision to House Sec. 518.	<b>Sec. 519</b> adopts the House provision and includes an authority for the Secretary of Homeland Security to oversee financial assistance for flight training for members of the Coast Guard College Student Pre-Commissioning Initiative Program.
<b>Sec. 577</b> would require a report evaluating barriers to minority participation in certain units of the Armed Forces.	<b>Sec. 519</b> is a similar provision to House Sec. 577.	<b>Sec. 557</b> adopts the Senate provision and requires a report by a federally funded research division by July 1, 2022.
<b>Sec. 554</b> would require DOD to establish a mentoring and career counseling program for officers.	No similar provision	<b>Sec. 571</b> adopts the House provision under 10 U.S.C. §626 with a goal of having diversity in the officer corps reflect the diversity of each armed force as a whole. This provision also includes the Coast Guard.
<b>Sec. 579</b> would require a DOD plan to prevent discrimination and reduce negative career impacts for pregnant servicemembers and DOD civilians.	No similar provision	<b>Sec. 555</b> adopts the House provision with an amendment requiring a policy to be developed and briefed to the Armed Services Committees within 180 days of enactment.
No similar provision	<b>Sec. 541</b> would require certain training on religious accommodations.	<b>Sec. 556</b> adopts the Senate provision.
<b>Sec. 576</b> would require DOD to develop and report on plans to increase female and minority representation in the Armed Forces.	<b>Sec. 5516</b> would require DOD to submit and implementation plan for Government Accountability Office (GAO) recommendations on female recruitment and retention.	Not adopted (elements adopted in other provisions).
<b>Sec. 574</b> would require DOD to include workplace survey questions about racist, xenophobic, anti-Semitic, supremacist, or extremist activity.	<b>Sec. 5586</b> is a similar provision to House Section 574 and would require DOD to include workplace survey questions about racist, anti-Semitic, or supremacist, activity.	<b>Sec. 553</b> adopts the Senate provision.
<b>Sec. 520</b> would require a study on SROTC and JROTC recruitment and advancement and correlations with race/ethnicity.	No similar provision	<b>Sec. 519D</b> adopts the House provision with an amendment to study also whether JROTC participants are more likely to join the military than non-participants.
<b>Sec. 1710G</b> would require a report from each service academy	No similar provision	<b>Sec. 558</b> requires a GAO report that examines equal opportunity claims and

House-Passed H.R. 6395	Senate Passed S. 4049	P.L. 116-283
on command climate, equal opportunity claims and minority inclusion in education and extracurricular activities.		command climate surveys at the service academies over a 2-year period.

**Discussion.** The House and Senate bills included several provisions that sought to enhance oversight of diversity and inclusion issues in DOD. In June and July 2020, then-Secretary of Defense Mark Esper announced several initiatives aiming to improve diversity and inclusion in DOD.<sup>14</sup> One of these initiatives was to establish a medium-term *Defense Board on Diversity and Inclusion*, and a long-term *Defense Advisory Committee on Diversity and Inclusion in the Armed Services* “to provide an independent and enduring review and assessment.” Section 551 of the FY2021 NDAA consolidates several provisions from the House and Senate bills to create reporting requirements on the advisory committee’s structure and findings and to prohibit the dissolution of the committee without congressional notification. Section 551 also seeks to standardize D&I metrics, data collection, methodology, and reporting across the armed forces and Coast Guard and requires certain reports to be publicly available after delivery to Congress. Metrics constructed under this authority are prohibited from being used to establish diversity-based quotas or undermining merit-based processes. In addition, the provision requires DOD policies to “define conscious and unconscious bias and provide guidance to eliminate such bias.” The provision requires plans and policies to address D&I barriers across the military lifecycle starting with recruitment and accession and requires annual meetings of senior leadership across the departments to provide a forum to assess progress towards D&I goals and share advice.

Secretary Esper’s July memo ordered a review of policies with respect to promotion boards and selection processes including provisions for diversity in promotion and selection board panels<sup>15</sup> and removal of pictures and references to race, ethnicity, and gender in promotion packets. The final enacted bill adopts two provisions of the House bill that affect how DOD conducts promotion and selection boards. Section 503 amends promotion statutes to ensure that boards “represent the diversity of the armed forces to the extent practicable.” Section 524 requires the redaction of official photos from selection board materials. Part of the justification behind the removal of pictures and, perhaps, other personally identifiable information is the belief that it will reduce the impact of *unconscious bias* that can affect promotion board decisions.<sup>16</sup>

<sup>14</sup> Memorandum from Mark Esper, Secretary of Defense, *Actions for Improving Diversity and Inclusion in the Department of Defense*, June 19, 2020, at <https://media.defense.gov/2020/Jun/22/2002319394/-1/-1/1/ACTIONS-FOR-IMPROVING-DIVERSITY-AND-INCLUSION-IN-THE-DOD.PDF>. Memorandum from Mark Esper, Secretary of Defense, *Immediate Actions to Address Diversity, Inclusion, and Equal Opportunity in the Military Services*, July 14, 2020, at [https://media.defense.gov/2020/Jul/15/2002457268/-1/-1/1/Immediate\\_Actions\\_to\\_Address\\_Diversity\\_Inclusion\\_Equal\\_Opportunity\\_in\\_Military\\_Services.pdf](https://media.defense.gov/2020/Jul/15/2002457268/-1/-1/1/Immediate_Actions_to_Address_Diversity_Inclusion_Equal_Opportunity_in_Military_Services.pdf)

<sup>15</sup> Covered promotion boards are those for active and reserve officers. The legislation also defines selection boards as any board “used with respect to the promotion, education, or command assignments of members of the Armed Forces that is not covered by the amendments made by this section.”

<sup>16</sup> *Unconscious bias, implicit bias, or implicit social cognition* refers to the assumptions or social stereotypes that individuals form about certain groups of people that are shaped by experience and culture, but held outside the individual’s conscious awareness. Implicit bias has been associated with unintentional discriminatory behavior towards individuals based on race, sex, or other physical attributes. Anthony G. Greenwald and Linda Hamilton Kriegert, “Implicit Bias: Scientific Foundations (Section VIII),” *California Law Review*, vol. 94, no. 4 (July 2006). Jeff Schogol, “Army removes indicators of race and gender in soldier promotions in an effort to fight bias,” *Task and Purpose*, June 26, 2020.

The final enacted bill could raise the prominence of diversity and inclusion issues in the Armed Forces by its establishment of several new positions. Section 913 establishes the position of Chief Diversity Officer for DOD, reporting directly to the Secretary of Defense and fourth in the DOD order of precedence, which makes this office senior to the Secretaries of the military departments. It also establishes Chief Diversity Officers for each of the military departments and the Coast Guard. Section 554 of the final enacted bill also establishes a Deputy Inspector General position for oversight and audit of D&I programs and supremacist, extremist, and criminal gang activity of a member of the Armed Forces. Previously the DOD Office for Diversity, Equity, and Inclusion (ODEI), under the Office of the Secretary of Defense for Personnel and Readiness, was the primary office responsible for developing and implementing diversity and equal opportunity policies and programs.<sup>17</sup>

The final enacted bill (Section 519) adopts similar provisions from the House and Senate bills (Sections 518 and 546) to authorize five-year pilot programs with Historically Black Colleges and Universities (HBCUs) and Minority Serving Institutions.<sup>18</sup> The purpose of these pilot programs would be to (1) reduce barriers to participation in Senior Reserve Officer Training Corps (SROTC) activities for covered institutions and (2) provide financial assistance for flight training for participants in SROTC and the Coast Guard Student Pre-Commissioning Initiative (CSPI). A 2014 RAND Corporation report on diversity in the Air Force found that “There is a lack of racial/ethnic minorities and women in rated career fields—including pilot, navigator, air battle manager, combat systems officer, and flight surgeon—which have the highest promotion and retention rates.”<sup>19</sup> Financial assistance or increased emphasis on flight training programs at HBCUs and MSIs might be one way to encourage minority selection of aviation occupations. Other data and studies have shown that minorities are underrepresented in certain career fields (like combat and special operations occupations).<sup>20</sup>

Section 577 of the House bill and Section 519 of the Senate bill are similar provisions to require further study of racial and gender barriers to selection and participation in designated career fields. The final enacted bill (Section 557) adopts the Senate provision requiring a report titled “Study on Reducing Barriers to Minority Participation in Elite Units in the Armed Services.”<sup>21</sup> Section 571 of the final enacted bill requires DOD to establish mentoring and career counseling programs with the explicit goal of having the officer corps in each branch of the service reflect the diversity of the service as a whole. This provision also includes the Coast Guard.

<sup>17</sup> See <https://diversity.defense.gov/ODMEO-Leadership/>.

<sup>18</sup> These covered institutions are, as per P.L. 116-92, §292, “a part B institution (as that term is defined in section 322(2) of the Higher Education Act of 1965 (20 U.S.C. §1061(2)); or any other institution of higher education (as that term is defined in section 101 of such Act (20 U.S.C. §1001)) at which not less than 50 percent of the total student enrollment consists of students from ethnic groups that are underrepresented in the fields of science and engineering.”

<sup>19</sup> Nelson Lim, *Improving Demographic Diversity in the U.S. Air Force Officer Corps*, RAND Corporation, p. xviii, at [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR400/RR495/RAND\\_RR495.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR400/RR495/RAND_RR495.pdf).

<sup>20</sup> CNA for the Office of the Under Secretary of Defense for Personnel and Readiness, *Population Representation in the Military Services*, Table B-20. Active Component Enlisted Members, FY18: by Occupational Area, Service, Race, and Gender, 2018, at [https://www.cna.org/pop-rep/2018/appendixb/b\\_20.html](https://www.cna.org/pop-rep/2018/appendixb/b_20.html). Margaret Harrell et al., *Barriers to Minority Participation in Special Operations Forces*, RAND Corporation, 1999, at [https://www.rand.org/pubs/monograph\\_reports/MR1042.html](https://www.rand.org/pubs/monograph_reports/MR1042.html).

<sup>21</sup> The bill requires a review of recommendations 1999 RAND Corporation report entitled “Barriers to Minority Participation in Special Operations Forces.” The Senate version of the bill also included a 2018 RAND report entitled “Understanding Demographic Differences in Undergraduate Pilot Training Attrition.” While the final enacted bill does not include a reference to this report, it does require the review to include pilot and navigator occupational specialties.

Department of Defense policies prohibit unlawful employment discrimination based on sex (to include pregnancy) for DOD civilian employees, but do not explicitly list pregnancy as a condition subject to sex-based discrimination against servicemembers.<sup>22</sup> In July 2020, Secretary of Defense Mark Esper announced that DOD would be releasing a new policy to prohibit pregnancy-based discrimination against servicemembers. Section 579 of the House bill requires DOD to develop a plan to safeguard pregnant servicemembers and DOD civilians from discrimination and to provide mechanisms to ensure that their careers are not harmed by pregnancy and childbirth. The final enacted bill adopts this provision (Section 555) and requires DOD to brief the Armed Services Committees on the policy.

Section 541 of the Senate bill requires training for commanders, chaplains, judge advocates, and others as recognized by the Secretary on religious accommodations for servicemembers. This follows a recommendation in the Senate Report to accompany the FY2018 NDAA.<sup>23</sup> The final enacted bill adopts this provision.

Other provisions adopted in the final enacted bill require DOD to conduct specific surveys or studies. Section 553 requires workplace equal opportunity surveys to include questions about “racist, anti-Semitic, or supremacist conduct.” Section 519D requires a study on recruitment and career outcomes for Junior Reserve Officer Training Corps (JROTC) and SROTC participants. Finally, Section 558 requires a GAO study that examines equal opportunity and command climate surveys at the service academies.

**References:** See CRS Report R44321, *Diversity, Inclusion, and Equal Opportunity in the Armed Services: Background and Issues for Congress*, by Kristy N. Kamarck; CRS In Focus IF11235, *Defense Primer: Senior Reserve Officer Training Corps*, by Kristy N. Kamarck; CRS In Focus IF11313, *Defense Primer: Junior Reserve Officers’ Training Corps (JROTC)*, by Kristy N. Kamarck; and CRS Report R46107, *FY2020 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Bryce H. P. Mendez.

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## Sexual Assault and Harassment in the Military

**Background:** Over the past decade, sex-related misconduct in the military, such as sexual assault and sexual harassment, has generated persistent congressional and media attention. Congress has (1) required additional study, data collection, and reporting to determine the scope of the issue; (2) expanded protections and support services for victims; (3) made substantial changes to the military justice system; and (4) taken other actions to enhance sexual assault prevention and response (SAPR). Specified sex-related offenses are crimes under the Uniform Code of Military Justice (UCMJ) and subject to prosecution by court-martial.<sup>24</sup>

<sup>22</sup> DoD Directive 1020.02E; Cyrus Salazar, *Updates on DoD Directives and DoD Instructions: Pregnancy Discrimination, Diversity and Inclusion, and Equal Opportunity*, DOD Office of Diversity, Equity, and Inclusion, Presentation to the Defense Advisory Committee on Women in the Services, September 2020, at <https://dacowits.defense.gov/Portals/48/Documents/General%20Documents/RFI%20Docs/Sept2020/ODEI%20RFI%2006.pdf?ver=2020-08-31-123612-570>.

<sup>23</sup> S.Rept. 115-125 states “The committee urges the Department, in consultation with commanders, chaplains, and judge advocates, to ensure that appropriate training on religious liberty is conducted at all levels of command on the requirements of the law, and to that end the committee directs the Secretary, in consultation with the Chief of Chaplains for the Army, Navy, and Air Force, to develop curriculum and implement training concerning religious liberty in accordance with the law. Recipients of this training should include commanders, chaplains, and judge advocates.

<sup>24</sup> 10 U.S.C. §1044e(h). A sex-related offense means any violation of article 120, 120b, 120c, or 130 of the UCMJ; or an attempt to commit such offense, as punishable under article 80.

**Sexual Assault and Harassment in the Military Sectional Analysis**

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<b>Reporting and Accountability</b>		
<b>Sec. 543</b> would add additional areas of review for the Defense Advisory Committee for the Prevention of Sexual Misconduct (DAC-PSM).	<b>Sec. 527</b> is an identical provision to House Sec. 543.	<b>Sec. 533</b> adopts this provision.
No similar provision	<b>Sec. 528</b> would require the DAC-PSM to include additional matters in its report to Congress.	<b>Sec. 534</b> adopts the Senate provision.
No similar provision	<b>Sec. 522</b> would extend DAC-PSM oversight to the Coast Guard Academy.	<b>Sec. 535</b> adopts the Senate provision.
No similar provision	<b>Sec. 525</b> would require a DOD strategy for holding leadership accountable for discharging the sexual harassment policies and programs.	<b>Sec. 539B</b> adopts the Senate provision.
<b>Sec. 544</b> would modify data-reporting requirements on victims of sexual assault for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD).	No similar provision	<b>Sec. 536</b> adopts the House provision.
<b>Sec. 549</b> would add a question regarding prosecutions of sexual assault to current workplace and gender relations surveys.	No similar provision	Not adopted
<b>Sec. 550A</b> would require an annual report to defense committees on the status of sex-related offense investigations.	No similar provision	<b>Sec. 539C</b> adopts the House provision.
<b>Sec. 594</b> would require a report on the feasibility of placing servicemembers into a non-rated period when they are in an academic status and are victims of sexual assault.	<b>Sec. 530</b> would require briefing the defense committees on placement of members of the Armed Forces into a non-rated period when they are in an academic status and are victims of sexual assault.	<b>Sec. 539F</b> adopts the Senate provision and requires a briefing within 270 days of enactment.
<b>Sec. 550B</b> would require a report on sexual abuse and harassment of recruits during medical examinations prior to entry into the Armed Force.	No similar provision	Not adopted
<b>Victim Services and Support</b>		
<b>Sec. 548</b> would require a safe-to-report policy applicable across the Armed Forces.	<b>Sec. 526</b> is an identical provision to House Sec. 548.	<b>Sec. 539A</b> adopts this provision.

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
No similar provision	<b>Sec. 521</b> would extend the time required for expedited decisions in connection with applications for change of station or unit transfer of members who are victims of sexual assault or related offenses.	<b>Sec. 531</b> adopts the Senate provision.
<b>Sec. 546</b> would require the Secretaries of Defense and Veterans Affairs to develop and implement a standard of coordinated care for survivors of sexual trauma.	No similar provision	<b>Sec. 538</b> adopts the House provision.
<b>Sec. 547</b> would require a policy on separation of victim and accused at military service academies.	<b>Sec. 529</b> is a similar provision to House Sec. 547.	<b>Sec. 539</b> adopts the House provision with amendments to minimize prejudicial impact, and to also apply to the U.S. Coast Guard Academy.
No similar provision	<b>Sec. 524</b> would require a congressional briefing on Special Victims' Counsel program	<b>Sec. 539E</b> adopts the Senate provision.
No similar provision	<b>Sec. 523</b> would require a survey and report on ability of Sexual Assault Response Coordinators and Sexual Assault Prevention and Response Victim Advocates to perform duties.	<b>Sec. 539D</b> adopts the Senate provision.
<b>Sec. 550C</b> would require the Secretary of Defense to prescribe regulations establishing a process by which a member of the Armed Forces may confidentially allege a complaint of sexual harassment to an individual outside the immediate chain of command.	No similar provision	<b>Sec. 532</b> allows for confidential reporting of sexual harassment, requires DOD to develop a plan for access to confidential reports to identify serial harassers, and requires DOD to report sexual harassment complaints to Congressional committees every two years.

**Discussion:** The following discussion comprises two topic areas, (1) Reporting and Accountability, and (2) Victim Services and Support. Other provisions that affect military judicial processes as they relate to sexual assault are discussed in the following section, “**Military Justice and Criminal Investigations.**”

**Reporting and Accountability.** Congress, in the FY2020 NDAA, required the establishment of a Defense Advisory Committee for the Prevention of Sexual Misconduct (DAC-PSM) with expertise in areas such as organizational culture, suicide prevention, implementation science, and the *continuum of harm*.<sup>25</sup> Identical provisions in the House and Senate bills (Sections 543 and 527) require expanding the committee’s scope for assessment by including the contractor work force and adding the authority to commission formal research. The final enacted bill adopts this change. The final enacted bill also adopts in Section 535, language from Senate Sections 522, and

<sup>25</sup> DOD defines *continuum of harm* as a range of interconnected, inappropriate behaviors that are connected to the occurrence of sexual assault and that support an environment that tolerates these behaviors. For more information, see, GAO, *Sexual Violence: Actions Needed to Improve DOD’s Efforts to Address the Continuum of Unwanted Sexual Behaviors*, GAO-18-33, December 18, 2017, at <https://www.gao.gov/products/GAO-18-33>.

528 that amend the committee’s specified oversight of “each military service academy” to clarify that its oversight includes the U.S. Coast Guard Academy (USCGA).<sup>26</sup> Additional areas of DAC-PSM study and reporting under Sections 533, 534, and 535 include a review of evidence-based sexual assault prevention assessments in workplaces and institutions of higher education, an assessment of SAPR training in professional military education (PME), and feasibility studies for preventing sexual assault focused on recruit screening and end-of-service interviews. Section 534 of the final enacted bill specifically requires an examination of reporting databases to ascertain whether the level of anonymization is sufficient to both protect victim privacy and provide military leaders with adequate information.

In the FY2015 NDAA, Congress called for the establishment of a 20-member Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD).<sup>27</sup> In the FY2019 NDAA, Congress required the DAC-IPAD to collect data on accusations of collateral misconduct against victims of sexual assault.<sup>28</sup> Section 536 of the final enacted bill adopts a House provision that amends this provision to require data collection on victims of a sexual *offense* (vice *assault*) who are *suspected* (vice *accused*) of a collateral offense. It also requires standardized data collection by the military services to support this requirement.

DOD’s Sexual Assault Prevention and Response Office (SAPRO) oversees sexual assault prevention policy and produces congressionally mandated surveys and annual reports on sexual assault prevalence, incidents, response actions, and administrative or judicial outcomes.<sup>29</sup> Section 549 of the House bill would have added a question to the DOD workplace gender relations surveys and focus groups to ascertain whether servicemembers would be more willing to report a sexual assault if prosecution decisions were made by lawyers instead of military commanders.<sup>30</sup> This provision was not adopted in the final enacted bill. Section 550B of the House bill, which would have required a DOD report on sexual assaults that happened during military recruit medical examinations, also was not adopted; however, the committee report directed DOD to brief the Armed Services Committees on information related to this population. Section 539C adopts Section 550A of the House bill, which adds an annual reporting requirement for the status of sexual assault investigations to include reasons for investigations that are longer than 180 days in duration. DOD currently collects and reports data on the number of investigations pending and completed, and the time interval from report of investigation to judge advocate general recommendations.<sup>31</sup>

**Victim Support and Services.** Both the House and Senate bills included the requirement for development of a *safe-to-report* policy (House Section 548 and Senate Section 526). This policy, which has been implemented in various forms at the military service academies, is intended to remove disincentives for alleged victims to report sexual assault incidents by protecting cadets

<sup>26</sup> There are five service academies. The remaining institution, the U.S. Merchant Marine Academy (USMMA), is not subject to the specified oversight of DAC-PSM. See <https://www.oig.dot.gov/sites/default/files/USMMA%20SAPR%20Final%20Report.pdf>

<sup>27</sup> P.L. 113-291, §546. See <https://dacipad.whs.mil/>.

<sup>28</sup> P.L. 115-232, §547; 10 U.S.C. §1561 note.

<sup>29</sup> Congress required annual reports in P.L. 111-383, §1631; 10 U.S.C. §1561 note. Workplace and gender relations surveys are required by 10 U.S.C. §481. DOD SAPRO surveys and reports can be found at <https://www.sapr.mil/reports>.

<sup>30</sup> For more on prosecution decisions in military sexual assault cases, see CRS Report R44944, *Military Sexual Assault: A Framework for Congressional Oversight*, by Kristy N. Kamarck and Barbara Salazar Torreon.

<sup>31</sup> DOD, *Department of Defense Fiscal Year 2019 Annual Report on Sexual Assault in the Military*, April 28, 2020, p. 1, and Appendix C: Metrics and Non-Metrics, p. 33.

and midshipmen from punishment for minor collateral misconduct violations that might be uncovered during an investigation.<sup>32</sup> A similar provision was proposed in the FY2020 NDAA, but was not adopted.<sup>33</sup> Survey data suggest that collateral misconduct (e.g., underage drinking) by the victim may reduce reporting of sexual assault. According to active duty survey data for 2018, 34% of women and 26% of men who experienced a sexual assault *did not* report the assault because they “thought they might get in trouble for something they had done or would get labeled a troublemaker.”<sup>34</sup> The final enacted bill adopted the Senate provision under Section 539A.

In the FY2011 NDAA, Congress added a provision that required the Secretary concerned to provide timely consideration of an application for permanent change of station or change of duty assignment by a victim of sexual assault or related offense.<sup>35</sup> Under this superseded *expedited transfer* policy, the commanding officer was required to make a decision within 72 hours of the submission of an application. Section 531 of the final enacted bill adopts a Senate provision that extends this decision making timeline to five calendar days.

The FY2020 NDAA provided for the ability of a military service academy cadet or midshipmen who is the victim of an alleged sexual assault to request a transfer to a different service academy or Senior Reserve Officer Training Corps (SROTC) unit.<sup>36</sup> Provisions in the House (§547) and Senate (§529) bills would require the Secretary of Defense to prescribe policies to minimize contact between the alleged victim and any offenders during academic and professional activities at the service academies. The Senate bill would expand this requirement to all DOD degree-granting institutions and the Coast Guard Academy.<sup>37</sup> Section 539 of the final enacted bill adopts the House provision with amendments to include the Coast Guard Academy and to minimize “prejudicial impact.”

In recent years, Congress has made several reforms to the Special Victim Counsel (SVC) program. An SVC is a judge advocate or civilian attorney who meets special training requirements and provides legal assistance to victims of sexual assault throughout the military justice process.<sup>38</sup> Section 524 of the Senate bill requires a congressional briefing on SVC staffing and caseloads under additional responsibilities imposed by the FY2020 NDAA.<sup>39</sup> Another provision in the Senate bill (Section 523) requires a survey and report on the ability of Sexual Assault Response Coordinators (SARCs) and Sexual Assault Prevention and Response Victim Advocates (SAPR-VAs) to perform duties.<sup>40</sup> Areas of assessment include access for these support

<sup>32</sup> Minor collateral offenses are defined in Section 527 of the Senate bill as, “(1) Improper use and possession of alcohol; (2) Consensual intimate behavior, including adultery or fraternization; (3) Presence in off-limits areas; and (4) Other misconduct specified in the regulations promulgated.” The U.S. Air Force Academy began implementing a safe-to-report policy in Academic Program Year (APY) 2017-18 and modeled it after a similar Naval Academy policy. *Annual Report on Sexual Harassment and Violence at the Military Service Academies (MSAs) for Academic Program Year (APY) 2017-2018*, Appendix C: United States Air Force Academy, January 25, 2019, p. 4.

<sup>33</sup> See discussion in CRS Report R46107, *FY2020 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Bryce H. P. Mendez.

<sup>34</sup> DOD Office of People Analytics, *2018 Workplace and Gender Relations Survey of Active Duty Members*, Overview Report, May 2019, pp. 35-36, at [https://www.sapr.mil/sites/default/files/Annex\\_1\\_2018\\_WGRA\\_Overview\\_Report.pdf](https://www.sapr.mil/sites/default/files/Annex_1_2018_WGRA_Overview_Report.pdf). CRS has not been able to find DOD data on the number of reports of sexual assault that occur following a misconduct offense.

<sup>35</sup> P.L. 112-81, §582, codified in 10 U.S.C §673.

<sup>36</sup> P.L. 116-92, §555.

<sup>37</sup> Other degree granting institutions would include, for example, the War Colleges, and Navy Postgraduate School.

<sup>38</sup> 10 U.S.C. §§1044, 1044e, and 1565b.

<sup>39</sup> P.L. 116-92, §548.

<sup>40</sup> SARCs are servicemembers or civilian DOD employees appointed by an installation commander or other appropriate

staff to resources and other assistance, perceptions of retaliation, and responsiveness of commanders. Both of these provisions were adopted in the final enacted bill.

In 2005, DOD instituted a *restricted reporting* option for sexual assault victims. This option is intended to help victims receive needed support services while maintaining a certain level of privacy. When a victim chooses to make a restricted report, he or she discloses the incident to specified officials and may then gain confidential access to medical health, mental health, and victim advocacy services. Incident data is then reported by the official to SAPRO for inclusion in DOD sexual assault statistics. Section 550C of the House bill requires DOD to provide a similar confidential reporting process for those who experience sexual harassment. This provision also requires DOD to develop mechanisms for tracking and reporting confidential complaints in annual reports to Congress. Section 532 of the final enacted bill adopts this provision with some amendments to make reports to Congress a biennial requirement and for DOD to develop a plan for using confidential reports to identify serial harassers.

**References:** See CRS Report R44944, *Military Sexual Assault: A Framework for Congressional Oversight*, by Kristy N. Kamarck and Barbara Salazar Torreon and CRS Report R46097, *Military Families and Intimate Partner Violence: Background and Issues for Congress*, by Kristy N. Kamarck, Alan Ott, and Lisa N. Sacco.

**Point of Contact:** Kristy N. Kamarck.

## Military Justice and Criminal Investigations

**Background.** The UCMJ Act of 1950 established a unitary military justice system for the armed forces.<sup>41</sup> Among other matters, it standardized servicemember rights and protections at courts-martial that are similar to rights provided in civilian criminal courts. The Act also made significant changes in trial procedure and appellate review. Under the Act, as amended, there is a Court of Criminal Appeals (CCA) in each military service and a Court of Appeals for the Armed Forces (CAAF).<sup>42</sup> The CCA is composed of military and civilian judges appointed by the Judge Advocate General of the military service, and the CAAF is composed of five civilian judges appointed by the President for a specific term.<sup>43</sup>

Certain judgments by a court-martial are automatically appealed to the CCA, while other appeals are mandated by a service's Judge Advocate General. An accused may appeal judgments not subject to automatic or mandated reviews.<sup>44</sup> If the CCA affirms the findings of a court-martial, appeals to the CAAF are at the discretion of the accused, except an affirmed conviction that imposes a death sentence, which is automatically appealed.<sup>45</sup> In lieu of a CAAF review, or after CAAF review, the accused may also seek review by the U.S. Supreme Court.<sup>46</sup>

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appointment authority. The SARC serves as a single point of contact for coordinating and documenting sexual assault response and victim care and reports directly to the installation commander. A SAPR-VA is a volunteer servicemember or DOD civilian employee who reports directly to the SARC. The SAPR-VA facilitates care and provides referrals and non-clinical support to adult victims of sexual assault.

<sup>41</sup> P.L. 81-506.

<sup>42</sup> 10 U.S.C. §§866 (Art. 66), 941 (Art. 41).

<sup>43</sup> 10 U.S.C. §942 (Art. 42).

<sup>44</sup> 10 U.S.C. §866 (Art. 66).

<sup>45</sup> 10 U.S.C. §867 (Art. 67).

<sup>46</sup> 10 U.S.C. §867a (Art. 67a).

Criminal investigations in the armed forces must be expressly authorized in law. Military commanders may investigate UCMJ offenses within their command, but a service’s military criminal investigation organization (MCIO) typically investigates serious offenses under the UCMJ and Title 18 of the U.S. Code.<sup>47</sup> The MCIOs in DOD are the Naval Criminal Investigative Service (NCIS), Army Criminal Investigation Command (CID), and Air Force Office of Special Investigations (OSI).<sup>48</sup> The Coast Guard Investigative Service (CGIS) is also a MCIO, and its jurisdiction extends to enforcement of certain maritime laws and coastwise trade laws.<sup>49</sup>

**Military Justice and Criminal Investigations Sectional Analysis**

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<i>Military Justice</i>		
<b>Sec. 531</b> would create a derivative offense of violent extremism if other UCMJ offenses are committed against a government or protected group of persons.	No similar provision	Not adopted
<b>Sec. 532</b> would require the preservation of all general and special court-martial records for 15 years, regardless of outcome.	<b>Sec. 533</b> is similar to House Sec. 532.	<b>Sec. 543</b> adopts both provisions by adding the 15 year rule as a new subsection to UCMJ Art. 140a.
<b>Sec. 540K</b> would provide notice to victims of post-trial filings that could unseal their private or privileged private information, or cause release of the accused.	<b>Sec. 531</b> is similar to House Sec. 540K.	<b>Sec. 541</b> adopts both provisions by adding the victim notice requirement to UCMJ Art. 6b.
<b>Sec. 540J</b> would modify current CCA <i>weight of evidence</i> factual sufficiency review that applies to the accused and the government, by limiting its application to whether the government’s evidence was factually sufficient. It would also require the court’s judges to have 12 or more years of experience practicing law.	<b>Sec. 532</b> is similar to House Sec. 540J, but it would require the court’s judges to have 12 or more years of experience of military or civilian criminal trial experience, but this requirement could be waived under certain conditions.	<b>Sec. 542</b> adopts the House provision by adding the factual sufficiency review and judge qualification requirement to UCMJ Art. 66, but a Senate amendment adds a CAAF review to UCMJ Art. 67 of any CCA findings of factual insufficiency.
<b>Sec. 540G</b> would prohibit anyone who may serve as a court-martial member from receiving any briefing on the same court-martial.	No similar provision	Not adopted
No similar provision	<b>Sec. 534</b> would require a GAO report on status of assessments and recommendations related to racial, ethnic, and gender disparities in the military justice system.	<b>Sec 547</b> adopts the Senate provision with initial briefing due to HASC and SASC by May 1, 2021.

<sup>47</sup> Department of Defense, *Instruction 5505.03, Initiation of Investigations by Defense Criminal Investigative Organizations*, March 24, 2011. A serious offense is an offense punishable by more than one year in prison or a punitive discharge.

<sup>48</sup> 14 U.S.C. §§522-525; 10 U.S.C. §§7377, 8750, 9377; Department of Defense, *Instruction 5505.16, Investigations by DoD Components*, June 23, 2017.

<sup>49</sup> *Ibid.* Officers and members of the Coast Guard are authorized to enforce Chapter 551 of Title 46.

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<b>Sec. 541</b> would create an attorney-client evidentiary privilege for a special victim counsel and client.	No similar provision	Not adopted
<b>Sec. 550</b> would establish a pilot program on prosecution of special victim offenses committed by attendees of military service academies.	No similar provision	Not adopted
<b>Criminal Investigations</b>		
<b>Sec. 537</b> would require DOD to collect and maintain data on all types of dissident and protest investigations that are referred for disposition.	No similar provision	<b>Sec. 554</b> adopts the House provision by amalgamating it with House Section 573 (See D&I section above).
<b>Sec. 540F</b> would require DOD to enter judicial proceeding data into the National Instant Criminal Background Check System within three days of the proceeding's completion.	No similar provision	<b>Sec. 544</b> adopts the House provision with a Senate amendment that defines the term <i>judicial proceeding</i> .
<b>Sec. 542</b> would provide a mechanism for military judges and magistrates to issue military court protective orders that could be enforced by civilian authorities.	No similar provision	Not adopted
No similar provision	<b>Sec. 586</b> would make the standard of review for expunging or correcting personally identifying information in the Department of Defense Central Index of Investigations (DCII) less restrictive.	<b>Sec. 545</b> adopts the Senate provision with establishment and implementation, and an accompanying report, required by October 1, 2021.

**Discussion.** Successive NDAs have required a wide range of reforms for administrative and military justice matters. These reforms tend to focus on sex-related offenses and protecting military family members, but targeting violent extremism is an additional area of congressional interest.

**Military Justice.** The House bill (Section 531) would have created a UCMJ punitive article that criminalizes violent extremism, but Congress did not adopt it. However, the committee conferees commented that they believed a UCMJ punitive article to prohibit such conduct may be appropriate to deter and prosecute such servicemembers.

The House (Section 532) and Senate (Section 533) bills amend Article 940a of the UCMJ to require the preservation of court-martial records. Section 543 of the final enacted bill amends 10 U.S.C. §940a to require the Secretary of Defense to establish agency-wide uniform standards and criteria for preserving special and general court-martial records, regardless of outcome, for not less than 15 years.

The House (Section 540K) and Senate (Section 531) bills amends Article 6 of the UCMJ to provide victims notice of certain court-martial matters. Section 541 of the final enacted bill amends 10 U.S.C. §806b to require victims to receive reasonable, accurate, and timely notice of a

post-trial motion, filing, or hearing that may address the finding or sentence of a court-martial with respect to the accused, unseal privileged or private information of the victim, or result in the release of the accused.

The House (Section 540J) bill amends Article 66 of the UCMJ to require certain qualifications for appellate judges and to limit when a CCA may determine that a court-martial judgment is incorrect in fact. The Senate bill would have amended the provision to require a CAAF review of any CCA decision that a judgment is incorrect in fact. Section 542 of the final enacted bill amended 10 U.S.C. §866 to limit CCA review to matters of law, unless the accused meets the requirements for requesting a factual sufficiency review. Additionally, under the amendment any commissioned officer or civilian assigned as an appellate military judge to a CCA shall have not fewer than 12 years of experience in the practice of law before such assignment. Section 542 also amended 10 U.S.C. §867 to require the CAAF to review any decision by a CCA finding that a court-martial judgment is incorrect in fact, and it must annually provide a report that includes an analysis of such decisions.

The House bill (Section 541) would have amended 10 U.S.C. §1044e to define providing legal advice by a Special Victims' Counsel (SVC) to the victim as the relationship between an attorney and a client, but the final enacted bill did not adopt this provision. The committee conferees noted their view that the relationship between a Special Victims' Counsel and an alleged victim in the provision of legal advice and assistance is that of an attorney and a client and is afforded the same privilege as every other attorney-client relationship.

***Criminal Investigations.*** The House bill (Section 537) requires the Secretary of Defense to develop and implement a process to track criminal and administrative investigations, and their findings and disposition, with respect to servicemember conduct that is prohibited under DOD Instruction 1325.06 (*Handling Dissident and Protest Activities Among Members of the Armed Forces*). This section also requires the Secretary to submit a report on the implemented process to the HASC and SASC not later than December 1 of each year, beginning after the date of the enactment of the provision. Congress amalgamated this requirement with a similar provision related to diversity and inclusion and adopted it as part of Section 554 of the FY2021 NDAA. This section also establishes a new deputy inspector general position in the DOD Office of the Inspector General with responsibility for these two areas of oversight (*Inspector General Oversight of Diversity and Inclusion in Department of Defense; Supremacist, Extremist, or Criminal Gang Activity in the Armed Forces*). Section 554 also establishes specific reporting requirements for diversity and inclusion in DOD and supremacist, extremist, or criminal gang activity in the armed forces.

The House bill (Section 540F) requires DOD to submit to the National Instant Criminal Background Check System information that would disqualify the accused in a UCMJ judicial proceeding related to domestic violence from possessing or receiving a firearm. The final enacted bill adopts this requirement and adds a provision that defines the term 'judicial proceeding' as a hearing (1) of which the person received actual notice and (2) at which the person had an opportunity to participate with counsel.

The House bill (Section 542) would have authorized military magistrates and military judges to issue a Military Court Protective Order. The order would have been enforceable by civilian courts and law enforcement officers. Such orders are meant to protect a victim of an alleged sex or

domestic violence offense, or a family member or associate of the victim, from a person subject to the UCMJ. Congress did not adopt this provision.<sup>50</sup>

The Senate bill (Section 586) addresses the Defense Central Index of Investigations (DCII) title and index correction or expungement process.<sup>51</sup> Section 585 of the final enacted bill adopts this provision which changes the current standard of review to allow greater probability that a titled and indexed servicemember who was never criminally prosecuted or administratively disciplined for the titled offense could have personally identifying information in the DCII expunged or corrected. The provision also requires that not later than October 1, 2021, the Secretary of Defense shall submit to the HASC and SASC a report on the actions taken under Section 545, including a comprehensive description of the policy and process developed and implemented to carry out the section’s requirements.

**References:** See CRS Insight IN11484, *Analysis of Military Court Protective Order Provision in H.R. 6395*, by Alan Ott; CRS Report R46503, *Military Courts-Martial Under the Military Justice Act of 2016*, by Jennifer K. Elsea and Jonathan M. Gaffney; and CRS Report R45970, *Gun Control: National Instant Criminal Background Check System (NICS) Operations and Related Legislation*, by William J. Krouse.

**Points of Contact:** Alan Ott and Kristy N. Kamarck (Sex-Related Offenses).

## Military Personnel Programs

The HASC and SASC have jurisdiction over the broad area of DOD policy and programs related to military personnel that are addressed in the FY2021 NDAA. This area includes matters associated with military families, such as DOD schools and DOD assistance programs that focus on military family members.<sup>52</sup>

## Military Awards, Honors, and Decorations

**Background.** The DOD awards and decorations program recognizes with personal military decorations servicemembers who perform qualifying acts of valor, non-combat heroism, or meritorious service or achievement. The program also recognizes with related DOD-wide service medals qualifying participation in a military campaign or expedition, or other significant military operation. No such award or decoration may be presented to an individual whose subsequent service was not honorable.

### Military Awards, Honors, and Decorations Sectional Analysis

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<i>Medal of Honor (MOH)</i>		

<sup>50</sup> For more analysis, see CRS Insight IN11484, *Analysis of Military Court Protective Order Provision in H.R. 6395*, by Alan Ott.

<sup>51</sup> Department of Defense, *Instruction 5505.07, Tiling and Indexing In Criminal Investigations*, February 28, 2018.

<sup>52</sup> U.S. Senate, *Document 113-18, Standing Rules of the Senate*, January 24, 2013, p. 20; U.S. House of Representatives, *Rules of the House of Representatives*, January 11, 2019, p. 6; *RCP 116-25, Rules Adopted by the Committees of the House of Representatives of the United States*, 116<sup>th</sup> Congress, 2019-2020, p. 37.

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<b>Sec. 1778</b> would extend the time from five to seven years to review World War I valor awards for certain veterans for a possible upgrade to the MOH.	No similar provision	<b>Sec. 561</b> extends the time from five to six years to review World War I valor awards for certain veterans for a possible upgrade to the MOH.
<b>Service Medals</b>		
No similar provision		<b>Sec. 562</b> authorizes the President to award certain medals: (a) DSC to Ramiro F. Olivo; (b) the MOH to Ralph Puckett, Jr.; (c) MOH to Dwight M. Birdwell; (d) MOH to Alwyn C. Cashe; (e) MOH to Earl D. Plumlee.
<b>Sec. 581</b> would require the Secretary of Defense to establish the Atomic Veterans Service Medal.	No similar provision	<b>Sec. 563</b> requires a feasibility study on the establishment of service medal for radiation-exposed veterans.
<b>Sec. 583</b> would allow for eligible veterans of Operation End Sweep to be awarded the Vietnam Service Medal.	No similar provision	Not adopted
<b>Honors</b>		
No similar provision	<b>Sec. 552</b> would authorize the Secretary of Defense to make honorary promotions including posthumous promotion of a former member or retired member of the Armed Forces.	<b>Sec. 523</b> authorizes the honorary promotion whether or not posthumous, of a former member or retired member of the Armed Forces.
<b>Eligibility and Presentation</b>		
No similar provision	<b>Sec. 551</b> would require the award or presentation of decorations favorably recommended following determination on the merits of proposals for decorations not previously submitted in a timely fashion.	Not adopted
<b>Sec. 525</b> would require the Secretaries of Defense and Veterans Affairs to prepare guidelines with respect to veterans' benefits under Title 38, U.S. Code,	No similar provision	Not adopted

**Discussion.**

**Medal of Honor.** The Medal of Honor (MOH) is the highest award for valor “above and beyond the call of duty” that may be bestowed on a U.S. servicemember. Reluctance on the part of reviewing officials to award the MOH retroactively or to upgrade other awards is generally based on concern for maintaining the integrity of the MOH and the awards process. This reluctance has led many observers to believe that the system of awarding the MOH is overly restrictive and that certain individuals are denied earned medals. As a result, DOD periodically reviews inquiries by Members of Congress and reevaluates its historical records. Systematic reviews began in the

1990s for World War II records. During World War II, Black units remained segregated and their units' and individuals' valorous actions, along with others, may be unacknowledged or insufficiently acknowledged. Subsequent record reviews of Jewish, Hispanic, Asian, and Pacific Islander servicemembers' records from World War II, Korea and Vietnam<sup>53</sup> resulted in the award of 24 MOHs in 2014.<sup>54</sup>

Section 584 of the FY2020 NDAA (P.L. 116-92) requires the review of military records of certain Asian, Jewish, Hispanic, Native American, and African American war veterans from World War I who were recommended for the MOH or were the recipients of the Distinguished Service Cross, Navy Cross, or French Croix de Guerre with Palm. Only four soldiers from any of the above groups, one Hispanic (Private David Barkley Cantu) and three Jewish veterans (First Sergeant Sydney Gumpertz, First Sergeant Benjamin Kaufman, and Sergeant William Sawelson), were awarded Medals of Honor at the conclusion of World War I. In April 1991, President George H.W. Bush awarded the MOH posthumously to Corporal Freddie Stowers, the first Black recipient from World War I, after the Army's review of his military records. Some critics maintain that other acts of heroism worthy of the highest military honor may have been overlooked or downgraded due to racism.

Section 561 of the FY2021 NDAA extends the period of review for certain medals from World War I by one year amending section 584(f) of the FY2020 NDAA. Section 1778 of the House-passed version would have amended Section 584(f) of the NDAA for FY2020 (P.L. 116-92) by extending by two years the period of review for valor medals from World War I that may be upgraded to the MOH. This would have expanded the time available for veterans to seek review and allowed more time to collect evidence for a review. The Senate-version has no similar provision.

Section 562 of the FY2021 NDAA authorizes the President to make certain awards, notwithstanding the time limitations specified in Section 7274 of Title 10, United States Code. Section 562 bestows: (a) the Army Distinguished Service Cross (DSC) to Ramiro F. Olivo for acts of valor during the Vietnam War; (b) the MOH to Ralph Puckett, Jr. for acts of valor during the Korean War; (c) the MOH to Dwight M. Birdwell for acts of valor during the Vietnam War; (d) the MOH to Alwyn C. Cashe for acts of valor during Operation Iraqi Freedom; and (e) MOH to Earl D. Plumlee for acts for valor during Operation Enduring Freedom.

**Service Medals.** Section 581 of the House-passed version would have required the Secretary to Defense to design and produce a new military service medal known as the “Atomic Veterans Service Medal” to honor retired and former servicemembers who are radiation-exposed veterans as defined in Section 1112(c)(3) of Title 38, U.S. Code. This provision would have recognized the veterans who witnessed the Trinity detonation in New Mexico<sup>55</sup> and the more than 225,000 who participated in later nuclear development and testing.<sup>56</sup> The Senate-passed version had no similar provision. The FY2021 NDAA, in Section 563, requires the Secretary of Defense to conduct a feasibility study on establishing a service medal for award to radiation-exposed veterans as

<sup>53</sup> The NDAA for FY2002 (P.L. 107-107, §552) called for a review of Jewish and Hispanic veteran war records from WWII, the Korean War, and the Vietnam War to ensure those deserving the Medal of Honor were not denied because of prejudice. During the review, records of several soldiers of neither Jewish faith nor Hispanic descent were also found to meet criteria worthy of the Medal of Honor. The 2002 act was amended to allow these soldiers to be honored with the upgrade. As a result of the review, 24 recipients were honored in 2014.

<sup>54</sup> Army, “Valor 24 Recipients,” March 18, 2014, at <https://www.army.mil/medalofhonor/valor24/>.

<sup>55</sup> The White House, “Presidential Message on the 75th Anniversary of the Trinity Nuclear Test,” July 16, 2020.

<sup>56</sup> Patricia Kime, “Lawmakers Want Medals, Not Certificates, to Honor Veterans Involved in Nuclear Testing,” *Militray.com*, July 16, 2020, at <https://www.military.com/daily-news/2020/07/16/lawmakers-want-medals-not-certificates-honor-veterans-involved-nuclear-testing.html>.

defined in Section 1112 of Title 38, 24 United States Code. This provision requires the Secretary of Defense to hold at least one meeting with representatives of organizations that advocate for radiation-exposed veterans (including leadership of the National Association of Atomic Veterans, Inc.) to discuss the study and to work on steps towards a mutually agreeable and timely recognition of these radiation-exposed veterans.

Section 583 of the House-passed version would have allowed veterans who participated in Operation End Sweep to apply for and receive the Vietnam Service Medal. Operation End Sweep was the mine sweep of Haiphong Harbor, Vietnam, during the conflict's ceasefire. On January 27, 1973, U.S. and North Vietnamese officials signed a protocol to the Paris agreement that called for the United States to neutralize the mines that the Navy had dropped in North Vietnam's coastal and inland waterways.<sup>57</sup> The operation to retrieve or destroy the mines found in the harbor began on February 6, 1973. It ended on June 17, 1973.<sup>58</sup> The Senate-passed version had no similar provision and the FY2021 NDAA did not adopt the House provision.

Section 551 of the Senate-passed version would have required the Secretary of Defense to submit a report on the regulations and procedures for awarding medals or other commendations to handlers of military working dogs (MWDs) as required by Section 582 of the FY2019 NDAA (P.L. 115-232). The report would have been due no later than 90 days after enactment of this Act. The House-passed version had no similar provision and the Senate receded during conference. The FY2021 NDAA instead directs the Secretary of Defense to provide a briefing, not later than 90 days after the date of the enactment of this Act, to the Committees on Armed Services of the House and Senate on the regulations and procedures to award medals or other commendations to handlers of MWDs.

**Honors.** Section 552 of the Senate-passed version would have amended Chapter 80 of Title 10, U.S. Code, by authorizing the Secretary of Defense to make honorary promotions, including posthumous promotion of a former member or retired member of the Armed Forces, to any grade not exceeding the grade of major general or rear admiral (upper half). The Secretary of Defense would have been required to notify the Armed Services Committees of the House and Senate at least 60 days prior to making an honorary promotion. This section would also have amended Section 1563 of Title 10, U.S. Code, requiring that all promotions made using this authority would be honorary with no effect on pay, retired pay, or other benefits. The House-passed version had no similar provision. The FY2021 NDAA includes a similar provision in Section 523 that amends Section 1563 of Title 10, United States Code, to require that all promotions made using this authority be honorary, whether or not posthumous, with no effect on pay, retired pay, or other benefits. The Secretary of Defense is required to notify the Armed Services Committees of the House and Senate and the requesting Member of Congress, if applicable, of such a decision at least 60 days prior to making an honorary promotion, including a detailed rationale for the determination.

**Eligibility and Presentation.** Section 525 of the House-passed version would have amended Section 528 of the FY2020 NDAA to require the Secretary of Defense to consult with the Secretary of Veterans Affairs in preparing guidelines with respect to veterans' benefits under Title

<sup>57</sup> Edward J. Marolda, "U.S. Mining and Mine Clearance in North Vietnam," U.S. Naval History and Heritage Command, June 15, 2020, at <https://www.history.navy.mil/research/library/online-reading-room/title-list-alphabetically/u/u-s-mining-and-mine-clearance-in-north-vietnam.html>.

<sup>58</sup> U.S. Naval Institute Archives, "February 6, 1973: Navy Task Force 78 Begins Operation End Sweep," Naval History Blog, posted on February 7, 2013, at <https://www.navalhistory.org/2013/02/07/february-6-1973-navy-task-force-78-begins-operation-end-sweep>.

38, U.S. Code, for which eligibility determination depends on the use of DOD service records. The Senate-passed version had no similar provision. The House-passed version was not adopted.

Section 551 of the Senate-passed version would have authorized a Secretary of a military department to present an award or decoration, following the favorable review of a request by a Member of Congress, after a 60-day period for congressional review. This provision would have amended Section 1130 of Title 10, U.S. Code, and eliminated the current requirement for legislation to waive the statute of limitation for award of a medal or decoration. According to the Congressional Budget Office (CBO), enacting Section 551 would have resulted in provision of awards that would not occur under current law, like the MOH that requires legislation for awards more than five years after the date of the act of valor.<sup>59</sup> CBO estimates that an additional five living individuals would have received the Medal of Honor over the 2021-2030 period under Section 551. CBO estimates that associated payments for these five monthly pensions would have increased direct spending by less than \$500,000 in each year, and by \$3 million over the 2021-2030 period.<sup>60</sup> The House-passed version had no similar provision. The FY2021 NDAA did not adopt the Senate provision. Instead the conferees noted in their Joint Explanatory Statement the importance of congressional oversight of the process of authorizing time limitation waivers; and especially any waiver for potential Medals of Honor be addressed by Congress in the NDAA.<sup>61</sup> The conferees also directed the Secretary of Defense to brief the Armed Services Committees no later than March 31, 2021, on mechanisms by which the process could be made more effective.<sup>62</sup>

**References:** See the “Medal of Honor” section of CRS Report R44577, *FY2017 National Defense Authorization Act: Selected Military Personnel Issues*, by Kristy N. Kamarck et al. and similar reports from earlier years; and CRS Report 95-519, *Medal of Honor: History and Issues*, by Barbara Salazar Torreon.

**CRS Point of Contact:** Barbara Salazar Torreon.

## Military Family Matters

**Background.** There are approximately 2.1 million members of the Armed Forces across the active and reserve components with an additional 2.6 million *dependents* (i.e., family members, typically spouses and/or children).<sup>63</sup> The military provides a number of *quality of life* programs and services for military families as part of a servicemember's total compensation and benefits package. Programs include family-life, career, and financial counseling; childcare services and support; and other Morale, Welfare, and Recreation (MWR) activities. The general motivation for providing these benefits is to improve the recruitment, retention, and readiness of military servicemembers.

### Military Family Matters Sectional Analysis

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<i>Family Readiness</i>		

<sup>59</sup> CBO, “S. 4049, the National Defense Authorization Act for Fiscal Year 2021,” as reported by the Senate Committee on Armed Services on June 23, 2020, updated July 1, 2020, p. 6 at <https://www.cbo.gov/system/files/2020-07/56462-S4049.pdf>.

<sup>60</sup> Ibid.

<sup>61</sup> Joint Explanatory Statement of the Committee of Conference, PDF p. 152, December 12, 2020, at <https://docs.house.gov/billsthisweek/20201207/116hrpt617-JointExplanatoryStatement.pdf>.

<sup>62</sup> Ibid.

<sup>63</sup> DOD, *Demographics: Profile of the Military Community*, 2018, pp. 127 and 149.

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<b>Sec. 561</b> would require DOD to develop family readiness: definitions, a communication strategy, and report to Congress.	No similar provision	<b>Sec. 581</b> adopts the House provision and requires DOD to act on recommendations from the National Academies of Science, Engineering and Medicine.
<b>Military Spouse Education and Employment</b>		
<b>Sec. 564</b> would expand eligibility for financial assistance under the My Career Advancement Account (MyCAA) program to continuing education courses and national testing (including College Level Examination Program tests)	<b>Sec. 577</b> is a similar provision to House Section 564 that also includes financial assistance for the Subject Standardized Tests of the Defense Activity for Non-Traditional Education Support Division of the Department of Defense.”	<b>Sec. 586</b> adopts the Senate provision.
<b>Sec. 615</b> would expand reimbursable State licensure and certification costs for a military spouse arising from relocation under 37 U.S.C. §476.	<b>Sec. 574</b> would clarify eligibility requirements for reimbursement of military spouse licensing costs pursuant to a permanent change of station and would shift the authority to 37 U.S.C. §453.	<b>Sec. 622</b> adopts the Senate provision.
<b>Sec. 570D</b> would require DOD to evaluate partner criteria for the Military Spouse Employment Program (MSEP).	No similar provision	<b>Sec 587</b> adopts the House provision and requires an additional report within one year of implementation of any program changes.
<b>Sec. 625</b> would require a DOD study on the feasibility of thrift savings plan (TSP) contributions by military spouses.	No similar provision	<b>Sec. 628</b> requires a DOD study on the feasibility of thrift savings plan (TSP) contributions by military spouses to the account of the servicemember.
<b>Military Childcare</b>		
<b>Sec. 563</b> would expand the authority for DOD to provide financial assistance to certain in-home childcare providers.	No similar provision	<b>Sec. 589</b> requires DOD to establish a pilot program for providing financial assistance to certain in-home childcare providers.
<b>Sec. 621</b> would expand the fee assistance authority to provide for survivors of servicemembers who die in the line of duty.	No similar provision	<b>Sec. 629</b> requires a GAO report on the implications of expanding the fee assistance program to survivors of servicemembers who die in the line of duty or active duty for training.
<b>Sec. 623</b> would require DOD to review the amount of the fee assistance subsidy for childcare services.	No similar provision	<b>Sec. 626</b> requires the Secretary of Defense to develop and implement a method to calculate fee assistance for childcare and youth program service providers, based on local variations in cost for childcare services.
<b>Sec. 624</b> would provide priority for certain military family housing to servicemembers whose spouse agrees to provide family home day care services.	<b>Sec. 576</b> would require several initiatives with respect to military childcare programs to include, <ul style="list-style-type: none"> <li>• center fee matters;</li> <li>• fee assistance program;</li> </ul>	<b>Sec. 627</b> provides priority for certain military family housing to servicemembers whose spouse agrees to provide family home day care services for at least one year.

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
	<ul style="list-style-type: none"> <li>increasing childcare workforce; and</li> <li>assessment of capacity at high-demand installations</li> </ul>	<b>Sec. 585</b> adopts the Senate provision with some amendments to allow for child development center discounts for families with 2 or more children and to require reports on high-demand installations.
<b>Sec. 565</b> would require a feasibility determination for providing 24-hour childcare to DOD servicemembers and employees who work on rotating shifts.	<b>Sec. 1067</b> is a similar provision to House Sec. 565.	<b>Sec. 588</b> requires the Secretary of Defense to provide childcare to servicemembers or DOD civilian employees while working a rotating shift at a military installation, if determined feasible after completing a study and reporting to Armed Services committees.
No similar provision	<b>Sec. 571</b> would delineate responsibility for allocation of certain funds for military child development programs.	<b>Sec. 584</b> adopts the Senate provision.
<b>Division H, Title II, Subtitle C, §§9301 - 9309—Access to Childcare for Coast Guard Families</b>	No similar provision	<b>Secs. 8231 – 8239</b> adopts these provisions with some amendments.
<b>Parental Leave</b>		
<b>Sec. 566</b> would allow for continuation of paid parental leave upon death of a child.	No similar provision	Not adopted
<b>Sec. 606</b> would provide compensation and credit for retired pay purposes for maternity leave taken by members of the reserve components.	<b>Sec. 603</b> is an identical provision to House Sec. 606.	<b>Sec. 602</b> adopts this provision.

**Discussion.** The following discussion comprises four topic areas.

- Family readiness.
- Military spouse education and employment.
- Military childcare programs.
- Military parental leave.

**Family Readiness.** In 2019, two reports were published that issued recommendations for improving the welfare of military families; the DOD Inspector General report, *Fiscal Year 2020 Top DOD Management Challenges*; and the National Academies of Science, Engineering and Medicine (NASEM) report, *Strengthening the Military Family Readiness System for a Changing American Society*.<sup>64</sup> Section 561 of the House bill requires DOD to develop a concept of family

<sup>64</sup> DODIG, *Fiscal Year 2020 Top DOD Management Challenges*, Challenge 3: Ensuring the Welfare and Well-Being of Military Servicemembers, October 15, 2019, at <https://media.defense.gov/2019/Nov/04/2002205654/-1/1/1/DEPARTMENT%20OF%20DEFENSE%20OFFICE%20OF%20INSPECTOR%20GENERAL%20FISCAL%20YEAR%202020%20TOP%20MANAGEMENT%20CHALLENGES.PDF>. National Academies of Sciences, Engineering, and Medicine, *Strengthening the Military Family Readiness System for a Changing American Society*, 2019, at <https://www.nap.edu/catalog/25380/strengthening-the-military-family-readiness-system-for-a-changing-american-society>.

readiness including definitions, a communication strategy, and a report to Congress on the feasibility of implementing other recommendations made by the published reports. Section 581 of the final enacted bill adopts the House provision and also requires DOD to act on the NASEM's recommendations.

***Military Spouse Education and Employment.*** Recognizing that the transient and unpredictable nature of a career in military service can impose unique burdens on military spouses, Congress has authorized several initiatives to provide support for military spouses' education, employment, and career development. One of these programs is DOD's *My Career Advancement Account* (MyCAA) Scholarship Program. MyCAA provides up to \$4,000 in non-taxable scholarship funds to eligible military spouses for licensure and certification programs.<sup>65</sup> The House and Senate bills for the FY2021 NDAA have similar provisions (Sections 564 and 577 respectively) that allow military spouses to use these funds for continuing education courses or certain national tests for credit towards an eligible degree program. Section 586 of the final enacted bill adopts the Senate provision.

Varied interstate licensing requirements may impose additional financial burdens on working spouses of military servicemembers who are typically faced with military permanent change of station (PCS) moves every two to three years. The FY2018 NDAA first authorized the reimbursement of qualified relicensing costs for military spouses as part of travel and transportation allowances associated with a PCS move from one state to another.<sup>66</sup> In the FY2020 NDAA, Congress raised the maximum reimbursement to \$1,000, required the Secretary of Defense to analyze whether that amount is sufficient to cover average relicensing costs, and extended the sunset date for the authorization from December 31, 2021, to December 31, 2024.<sup>67</sup> Section 615 of the House bill would have expanded qualified relicensing costs to include the costs of continuing education courses. Section 574 of the Senate bill expands the FY2018 authority to allow for reimbursement in additional cases where a PCS move or *permanent change of assignment* occurs "between duty stations located in separate jurisdictions with unique licensing or certification requirements and authorities." Section 622 of the final enacted bill adopts the Senate provision.

In the FY2002 NDAA, Congress directed DOD to partner with the United States Chamber of Commerce and with private-sector employers to enhance private employment opportunities for military spouses.<sup>68</sup> The Military Spouse Employment Partnership (MSEP) is one such DOD effort to build these partnerships.<sup>69</sup> The centerpiece of MSEP is a web-based job search and recruitment platform. Participating employers are subject to a screening process and must commit to certain actions to support military spouses. Section 570D of the House bill would require DOD to review the criteria for participation with an eye on expanding the number of participating local small businesses, companies that employ telework, software and coding companies, and educational institutions. This provision would also require a report to Congress on certain metrics following the implementation of program changes. Section 587 of the final enacted bill adopts the House

<sup>65</sup> Funds are distributed to the qualified institution providing the education or training. Eligible military spouses are those whose servicemember spouse is a junior officer (O-1 and O-2), warrant officer (W-1 and W-2), or enlisted servicemember (E-1 through E-9).

<sup>66</sup> P.L. 115-91, §556.

<sup>67</sup> P.L. 116-92, §577.

<sup>68</sup> P.L. 107-107, §571.

<sup>69</sup> For more on MSEP, see <https://msepjobs.militaryonesource.mil/msep/>.

provision and requires an additional report to Congress within one year of implementation of any program changes.

Finally, due to frequent PCS moves, military spouses may not spend enough time with a single employer to qualify for vesting in employer contributions to retirement savings plans (e.g., 401k). Section 625 of the House bill would have required a study to determine the feasibility of allowing military spouse contributions or transfers to the Thrift Savings Plan (TSP). Military servicemembers and federal employees are authorized to contribute to the TSP, and the government provides matching contributions for those who are eligible.<sup>70</sup> A provision in the final enacted bill (Section 628) requires a DOD study on the feasibility of TSP contributions by military spouses to the account of the servicemember.

**Military Childcare.** DOD operates the largest employer-sponsored childcare program in the United States, serving approximately 200,000 children of uniformed servicemembers and DOD civilians and employing over 23,000 childcare workers, at an annual cost of over \$1 billion. Subsidized care is provided at child development centers (CDCs) and family homes on military installations. Eligible families receive financial assistance for qualified care centers off-installation under the *fee assistance* program.<sup>71</sup>

Section 563 of the House bill would have expanded the fee assistance authority and allow DOD to provide financial assistance to military families for certain *in-home* childcare providers including nannies, babysitters, and au pairs. The final enacted bill (Section 589) requires DOD to establish a pilot program for providing financial assistance to certain in-home childcare providers.

In the FY2020 NDAA, Congress extended eligibility for fee assistance to survivors of servicemembers who die in combat-related incidents in the line of duty.<sup>72</sup> Section 621 of the House bill would have removed the requirement that the servicemember's line-of-duty death was combat-related. The final enacted bill (Section 629) does not authorize this change, but rather requires a GAO report to examine the issue.

Section 623 of the House bill would have required DOD to review the amount of the fee assistance subsidy for childcare services, taking into account local cost of living and childcare costs, waitlists at installation CDCs, and the availability of childcare providers on the base and in the civilian community. Section 626 of the final enacted bill requires the Secretary of Defense to develop and implement a method to calculate fee assistance for childcare and youth program service providers, based on local variations in cost for childcare services.

DOD also subsidizes certified home-based childcare services, called Family Care Centers (FCCs), for children between the ages of 4 weeks through 12 years on military installations. Section 624 of the House bill would have given priority for installation family housing to a servicemember whose spouse is willing to establish an FCC. Section 576 of the Senate bill would also have required DOD to explore incentives for military spouses to establish FCCs in their homes. Section 627 of the final enacted bill adopts the House provision allowing Service Secretaries to give priority for military family housing to spouses who agree to provide family home day care services for at least one year.

<sup>70</sup> See CRS Report RL34751, *Military Retirement: Background and Recent Developments*, by Kristy N. Kamarck and CRS Report RL30387, *Federal Employees' Retirement System: The Role of the Thrift Savings Plan*, by Katelin P. Isaacs.

<sup>71</sup> The fee assistance program is authorized under 10 U.S.C. §1798.

<sup>72</sup> P.L. 116-92, §624.

In February 2020, DOD announced changes to the priority and waitlist system for installation-based childcare services to provide a higher priority for military families over DOD civilians.<sup>73</sup> Section 576 of the Senate bill would have also required liberal use of hardship waivers for CDC fees and family discounts for additional children. It would have sought to standardize fee assistance programs across the military departments and expressed a preference for the Army fee assistance program model.<sup>74</sup> In terms of childcare employees, Senate Section 576 would have authorized the Service Secretaries to provide certain incentives to encourage recruitment and retention of the childcare workforce (e.g., education benefits and wellness/fitness programs). Finally, this provision would have required an assessment of installations that exhibit an “extreme imbalance between demand for and availability of childcare” with recommendations to Congress on ways to address these imbalances. Section 585 of the final enacted bill adopts some elements of Section 576 of the Senate bill by amending 10 U.S.C. §1793 to authorize DOD to provide discounts to families with two or more children in CDC care. It also requires reports to Congress on installations with an “extreme imbalance” between demand for childcare and availability. While the conference did not adopt other elements of Senate Section 576, the report to accompany the bill noted,

The conferees note that existing authorities allow for the liberal issuance of hardship waivers regarding childcare fees and encourage the Department of Defense to continue offering flexible childcare options for servicemembers and their families. Additionally, the conferees strongly encourage the Department to utilize enhanced marketing and recruitment techniques to hire qualified childcare employees, and provide competitive benefits in order to retain them.<sup>75</sup>

Some military positions require frequent shiftwork. At times this creates challenges for military families in finding childcare services for irregular hours. Similar provisions in the House and Senate bills require DOD to determine the feasibility of making 24-hour childcare available to DOD servicemembers and employees who work on rotating shifts. The final enacted bill adopted this provision under Section 588 and requires DOD to implement the policy if feasible.

Section 1791 of Title 10, United States Code, is the authority for using appropriated funds for military childcare programs. Section 584 of the final enacted bill adopts Section 571 of the Senate bill and amends this statute to give the Secretary of Defense the responsibility for allocating funds and to prohibit delegation of this responsibility to the military services. The Senate Committee report to accompany the bill states,

The committee remains concerned about the Department of Defense’s plans to transfer funds to the military services to provide childcare fee assistance as part of the Defense-Wide Review.<sup>76</sup> The committee believes that military family childcare should remain among the Department’s highest priorities and transferring resources to the military services would degrade standardization of the program and hinder oversight capabilities of the Office of the Secretary of Defense.<sup>77</sup>

<sup>73</sup> Secretary of Defense Memorandum, *Policy Change Concerning Priorities for Department of Defense Child Care*, February 21, 2020, at [https://media.defense.gov/2020/Mar/09/2002261354/-1/-1/1/POLICY\\_CHANGE\\_CONCERNING\\_PRIORITIES\\_FOR\\_DEPARTMENT\\_OF\\_DEFENSE\\_CHILD\\_CARE\\_PROGRAMS.PDF](https://media.defense.gov/2020/Mar/09/2002261354/-1/-1/1/POLICY_CHANGE_CONCERNING_PRIORITIES_FOR_DEPARTMENT_OF_DEFENSE_CHILD_CARE_PROGRAMS.PDF).

<sup>74</sup> See <https://www.childcareaware.org/fee-assistancerespite/military-families/army/>.

<sup>75</sup> H.Rept. 116-617, pdf. p. 130.

<sup>76</sup> DOD, *FY2021 Defense Wide Review*, January 2020.

<sup>77</sup> S.Rept. 116-236, p. 207.

The final enacted bill adopts Division H, Title II, Subtitle C of the House Bill, which addresses childcare issues for U.S. Coast Guard personnel and their families. Several provisions under this section seek to provide parity with DOD childcare programs, through surveys, studies, and pilot programs.

**Military Parental Leave.** The FY2017 NDAA authorized up to 12 weeks of parental leave (including up to six weeks convalescent leave) for the primary caregiver in connection with the birth of a child.<sup>78</sup> It also authorized six weeks of leave for a primary caregiver in the case of an adoption of a child. Under this legislation, secondary caregivers can take up to 21 days of leave in connection with a birth or adoption. Section 566 of the House bill would have allowed the member to take the full parental leave even if the child dies prior to the end of the previously approved leave period. This provision was not adopted; however, the committee report noted that,

Commanders are entrusted with the responsibility of taking care of their troops, which would include ensuring they have the ability to take leave to deal with the pain caused by the death of a child. If it becomes clear that commanders are not performing as expected, the conferees remain open to considering future legislation in this area.

Sections 606 of the House bill and 603 of the Senate bill are identical provisions that allow military reservists on maternity leave to continue to receive credit towards military retirement. This provision was adopted in the final enacted bill.

**References:** See CRS Report R46498, *Military Spouse Employment*, by Kristy N. Kamarck, Barbara L. Schwemle, and Sofia Plagakis; CRS Report R45288, *Military Child Development Program: Background and Issues*, by Kristy N. Kamarck; and CRS Report RL34751, *Military Retirement: Background and Recent Developments*, by Kristy N. Kamarck.

**Point of Contact:** Kristy N. Kamarck.

## COVID-19 Personnel Program Provisions

**Background.** Throughout 2020, DOD responded to many requests for Defense Support of Civilian Authorities (DSCA) as part of its role in the federal response to COVID-19. Several requirements for new or modified personnel programs or authorities arose in relation to the military units and personnel providing this support. Soldier and family personnel programs and benefits requirements were also affected by COVID-19 support activities, to include COVID-19 testing and treatment, education services for military dependents, requirements for special pays, and delayed entitlements or other benefits.<sup>79</sup>

### COVID-19 Personnel Program Provisions Sectional Analysis

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<i>Military Pay and Retirement</i>		

<sup>78</sup> P.L. 114-328, §521; 10 U.S.C. §701. Convalescent leave is a type of medical leave that is typically approved by a physician.

<sup>79</sup> See Amy Bushatz, “Will Troops Continue to Receive Special Pays Amid the Pandemic? It Depends,” *Military.com*, April 9, 2020, at <https://www.military.com/daily-news/2020/04/09/will-troops-continue-receive-special-pays-amid-pandemic-it-depends.html>; and DOD, “Fact Sheet: COVID-19 Military Personnel, Pay, and Benefits Policy – Supplement 1,” April 9, 2020, at [https://www.whs.mil/Portals/75/Coronavirus/DoD%20Military%20Pay%20%20Personnel%20Benefits%20FAQ\\_SUP%201.pdf?ver=2020-04-09-134841-657](https://www.whs.mil/Portals/75/Coronavirus/DoD%20Military%20Pay%20%20Personnel%20Benefits%20FAQ_SUP%201.pdf?ver=2020-04-09-134841-657).

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
No similar provision	<b>Sec. 602</b> would direct the Service Secretaries to issue hazardous duty pay for members of the Armed Forces performing in response to the COVID-19 pandemic.	Not adopted
<b>Sec. 514</b> would grant constructive credit towards retirements for a member of the Reserve Components who cannot complete minimum annual training requirements due to the COVID-19 pandemic.	<b>Sec. 621</b> is similar to House Sec. 514.	<b>Sec. 516</b> adopts Senate Sec. 621 with an amendment that amends Sections 12732 and 12733 of Title 10, United States Code, to authorize the Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard, to provide points for reserve retirement purposes if a reserve servicemember is prevented from participating in required drills or training during the emergency period beginning on March 1, 2020, which coincides with the COVID-19 pandemic. The provision also requires the Secretary of Defense to provide a report to the Committees on Armed Services of the Senate and the House of Representatives on the use of this authority.
<b>Other Personnel-Related Provisions</b>		
<b>Sec. 519</b> would require the DOD to submit a report to Congress on how the Secretary of Defense determined the authorization of full-time National Guard duty in response to the COVID-19 pandemic.	No similar provision	<b>Sec. 519A</b> adopts House Sec. 519 with a technical amendment.
<b>Sec. 520B</b> would require DOD to provide quarantine housing for National Guard members upon completion of active service in response to the COVID-19 pandemic.	No similar provision	<b>Sec. 517</b> adopts House Sec. 520B with an amendment that authorizes the Secretary of Defense to provide at least 14 days of housing for members of the Reserve Component ordered to active service in response to the COVID-19 national emergency.
<b>Sec. 596</b> would direct the Secretary of Defense to conduct a study on financial hardships among servicemembers during the COVID-19 pandemic.	No similar provision	<b>Sec. 597</b> adopts House Sec. 596 with a technical amendment.

**Discussion.** The selected provisions discussed below relate to COVID-19 specific military personnel issues and programs. Selected provisions related to COVID-19 specific Defense Health Care and Public Health issues and programs are discussed separately.

**Military Pay and Retirement.** Section 602 of the Senate bill would have directed Service Secretaries to issue hazardous duty pay to certain servicemembers performing duty in response to

the COVID-19 pandemic between January 1, 2020, and December 31, 2020. The provision would have required DOD to issue regulations specifying the eligibility criteria for hazardous duty pay, which would have been no less than \$150 per month. In addition, the Senate would have expressed its sense that DOD should provide hazardous duty pay to certain health care providers and support staff who treat COVID-19 patients. The provision was not adopted.

House Section 514 would have authorized the Secretary of Defense to approve constructive credit for certain Reserve servicemembers who were not able to complete minimum annual training requirements due to cancellation or other extenuating circumstance resulting from the COVID-19 pandemic. The provision would have required DOD to submit a report to Congress, no later than one year after the COVID-19 national emergency ends, that includes the number of servicemembers granted constructive credit and recommendations on whether such authority should be made permanent.<sup>80</sup> Senate Section 621 would have amended 10 U.S.C. §§12732 and 12733 to authorize retirement points to reserve servicemembers if they were prevented from performing inactive duty training (i.e., drill periods) due to certain travel or duty restrictions during a “covered emergency period.”<sup>81</sup> The final enacted bill contains Section 516, which requires the military services to credit the following to eligible servicemembers, not to exceed 35 points in a one-year period:

- one point for each day of active service; or
- one point for each drill or period of equivalent instruction.

**Other Personnel-Related Provisions.** Section 519 of the House bill requires DOD to submit a report to the congressional defense committees, no later than 90 days after enactment, on how the Secretary of Defense determined to authorize full-time National Guard duty to respond to the COVID-19 pandemic. The report is to include: how many requests were received from states and the outcomes (i.e., approved or denied), the length of time to adjudicate each request, a description of cost considerations (if any), reasoning for denied requests, a description of any process differences (compared with pre-COVID-19 requests), and recommendations to improve the request process. Section 519A of the final enacted bill adopts this provision with a technical amendment.

House Section 520B requires the Secretary of Defense to provide at least 14 days of quarantine housing for National Guard personnel completing active service in response to the COVID-19 pandemic. The final enacted bill’s provision expands this eligibility to all members of the Reserve Component.

House Section 596 was incorporated into the final enacted bill with a technical amendment as Section 597. It directs DOD to conduct a study and submit a report to Congress, no later than 120 days after enactment, on financial hardships among servicemembers during the COVID-19 pandemic. The study is to review the financial impact to servicemembers relating to stop movement orders; loss of spousal income, hazardous duty incentive pay, educational benefits, and drill and exercise pay; cancelled deployments; and other financial stressors. In conducting the study, the provision also requires DOD to consult with the Consumer Financial Protection Bureau and Department of Homeland Security (with regard to the members of the Coast Guard).

**References:** See CRS Insight IN11273, *COVID-19: The Basics of Domestic Defense Response*, coordinated by Michael J. Vassalotti; CRS In Focus IF10335, *DOD Domestic School System*:

<sup>80</sup> The “COVID-19 national emergency” refers to the period in the President’s Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, March 13, 2020.

<sup>81</sup> The “covered emergency period” would begin on March 1, 2020, and end 60 days after the applicable travel or duty restriction is lifted.

*Background and Issues*, by Kristy N. Kamarck; and CRS Report RL33446, *Military Pay: Key Questions and Answers*, by Lawrence Kapp and Barbara Salazar Torreon.

**Points of Contact:** Hibbah Kaileh, Kristy N. Kamarck, and Lawrence Kapp.

## Maritime and Civilian Personnel

Besides its military personnel portfolio, HASC and SASC jurisdiction includes the policy and programs for DOD civilian personnel and related authorities that are addressed in the FY2021 NDAA.<sup>82</sup> Such jurisdiction also covers the national security aspects of maritime policy and merchant marine personnel.<sup>83</sup> Among other areas, the committees' maritime oversight includes the FY2021 NDAA provisions for the funding and operations of the U.S. Merchant Marine Academy (USMMA) (a component of the Maritime Administration (MARAD), which is in the Department of Transportation (DOT)).<sup>84</sup> Such oversight extends to the Act's provisions for the six federally supported state maritime academies (SMAs) (See **Table 4**).

### Merchant Mariners

**Background.** The USMMA at Kings Point, New York, is a federal service academy with an approximate enrollment of 1,000 cadets and 40 preparatory school students.<sup>85</sup> The cadets are also midshipmen in the Navy Reserve.<sup>86</sup> The Academy prepares students to be merchant marine officers (licensed mariners) for maritime service and strategic sealift officers for military service.<sup>87</sup> Admission to USMMA is through a competitive process and congressional nomination is required.<sup>88</sup> Tuition and many other expenses are paid by the federal government, but unlike at all other service academies, USMMA students are responsible for some attendance expenses.<sup>89</sup>

<sup>82</sup> U.S. Senate, *Document 113-18, Standing Rules of the Senate*, January 24, 2013, p. 20.

<sup>83</sup> U.S. House of Representatives, *Rules of the House of Representatives*, January 11, 2019, p. 6; *RCP 116-25, Rules Adopted by the Committees of the House of Representatives of the United States*, 116<sup>th</sup> Congress, 2019-2020, p. 37. Specific national security areas of maritime policy under HASC jurisdiction include cabotage, cargo preference, financial assistance for the construction and operation of vessels, and maintenance of the U.S. shipbuilding and ship repair industrial base.

<sup>84</sup> The *Merchant Marine Act of 1936* created the United States Maritime Commission (MARCOM) and among other matters, required the establishment of a federal merchant marine officer training program. USMMA began operations in January 1942 and was formally established in September 1943. The shore based officer training program at USMMA evolved from the ship based U.S. Merchant Marine Cadet Corps program established in 1938. The United States Maritime Service (USMS) administered both programs. MARCOM created USMS in 1938 as a uniformed service responsible for federal merchant marine training programs. USMS continues in this role today, but now under the control and direction of MARAD. Although USMS members still wear a nautical military uniform and have a commissioned officer rank structure identical to Coast Guard officer rank, it is now part of the federal civil service and is no longer defined as a uniformed service (See 46 U.S.C. §51701; 10 U.S.C. §101(a)(5)).

<sup>85</sup> 46 U.S.C. §§51301, 51303; Department of Transportation, *Maritime Administration CFO Directive – 16*, Version 4, March 30, 2020, p. 5. The Academy is a four year college accredited by the Middle States Commission on Higher Education and confers the degree of Bachelor of Science, see <https://nces.ed.gov/collegenavigator/?q=merchant+marine&s=all&id=197027#enrolmt>.

<sup>86</sup> 46 U.S.C. §51311. USMMA cadets are required by law to apply for midshipman status in the Navy Reserve.

<sup>87</sup> 46 C.F.R. §310.52; U.S. Navy, *Program Authorization 221, Reserve Component (RC) Designator 1665 (Strategic Sealift Officer (SSO)) direct commission officer (DCO) program*, June 2019.

<sup>88</sup> 46 U.S.C. §51302. Nomination and competitive appointment of cadets.

<sup>89</sup> 46 U.S.C. §51314. Limitation on charges and fees for attendance.

USMMA cadets must meet certain requirements to graduate. These requirements include successfully completing the school’s academic program, accumulating at least 360 days of sea-time serving aboard sealift or merchant vessels, and passing the U.S. Coast Guard examination for a merchant marine deck or engineer officer’s license.<sup>90</sup> Academy graduates incur a federal service obligation that is fulfilled by concurrent military reserve service for eight years and merchant mariner licensure for six years. Alternatively, they can fulfill it by spending five years serving on active duty in any uniformed service or working for the federal government in a civilian maritime role.<sup>91</sup>

**FY2020 NDAA Independent Study of USMMA<sup>92</sup>**

The FY2020 NDAA requires the National Academy of Public Administration (NAPA) to conduct a comprehensive assessment of USMMA systems, training, facilities, infrastructure, information technology, and stakeholder engagement (the COVID-19 Pandemic has delayed the assessment). NAPA’s study is meant to identify needs and opportunities for modernization to help USMMA keep pace with more modern campuses. NAPA is also required to develop an action plan for USMMA with specific recommendations for systemic changes and improvements.

Admission to SMAs is governed by state and institutional policy. Students at SMAs are responsible for all tuition and expenses, but if eligible, they can receive federal student aid or scholarships that may be available at their institution. ROTC scholarships are not offered at SMAs, but MARAD’s competitive *Student Incentive Payment* (SIP) program is an alternative source of federal funding that may be available to eligible students. SIP participants at SMAs can receive \$8,000 of tuition assistance per year for a total of \$32,000 over four years.<sup>93</sup> Upon graduation, SIP recipients incur the same service obligation as USMMA graduates, concurrent military reserve service for eight years and merchant mariner licensure for six years.

The Strategic Sealift Midshipman Program (SSMP) is a Navy education and training program conducted by the Department of Naval Science at USMMA and the SMAs.<sup>94</sup> The SSMP’s principal purpose is to qualify participants for service in the Navy’s Strategic Sealift Officer Program (SSOP).<sup>95</sup> All USMMA cadets participate in SSMP and participation in SSMP at SMAs is mandatory for SIP recipients and elective for other students. Successful program participants may receive a U.S. Navy Reserve officer commission as a strategic sealift officer (SSO) with the rank of ensign. The Navy Reserve assigns SSOs to the Strategic Sealift Readiness Group (SSRG), which is part of the Navy’s Individual Ready Reserve (IRR).

**Table 4. Post-Secondary Maritime Institutions**

Federal and State Academies

Institution	Location	Established
U.S. Merchant Marine Academy	Kings Point, New York	1942
State University of New York Maritime College	New York City (The Bronx), New York	1874
Massachusetts Maritime Academy	Buzzards Bay, Massachusetts	1891

<sup>90</sup> U.S. Merchant Marine Academy, *Course Catalog*, 2019-2020, pp. 37-38.

<sup>91</sup> 46 U.S.C. §51306.

<sup>92</sup> P.L. 116-92, §3513.

<sup>93</sup> 46 U.S.C. §51509.

<sup>94</sup> U.S. Navy, *NSTC M-1533.2C, United States Naval Reserve, Administration and Management Annex, Appendix R, Strategic Sealift Midshipmen Program*, CH-2, January 2019.

<sup>95</sup> Department of the Navy, *OPNAV Instruction 1534.IE, Strategic Sealift Officer Program*, 1 Dec 2017.

Institution	Location	Established
California State University Maritime Academy	Vallejo, California	1929
Maine Maritime Academy	Castine, Maine	1941
Texas A&M Maritime Academy	Galveston, Texas	1962
Great Lakes Maritime Academy	Traverse City, Michigan	1969

**Source:** See <https://www.usmma.edu/>; <https://www.sunymaritime.edu/>; <https://www.maritime.edu/>; <https://www.csum.edu/>; <https://mainemaritime.edu/>; <https://www.tamug.edu/corps/>; <https://www.nmc.edu/maritime/>.

The NDAA generally includes DOT funding authorizations for USMMA and SMAs. The FY2021 authorization amounts are compared to the FY2020 amounts in **Table 5**. For USMMA, the FY2021 NDAA authorized \$85,441,000. Approximately 93.5% of this authorization is for operations and maintenance and 6.5% is available until expended for capital asset management. The FY2021 NDAA authorized \$50,780,000 for the six SMAs and their training ships. Approximately 80% of this authorization is for several types of training ship expenses and the remaining 20% is for SMAs operations and student programs.

**Table 5. FY2020 and FY2021 MARAD Funding Authorizations**

Education and Training Programs

Program	FY 2020 NDAA	FY 2021 NDAA	NDAA Difference
<b>U.S. Merchant Marine Academy</b>			
Academy Operations	77,944,000	79,941,000	1,997,000
Capital Asset Management	18,000,000	5,500,000	(12,500,000)
<i>Subtotal</i>	<i>95,944,000</i>	<i>85,441,000</i>	<i>(10,503,000)</i>
<b>State Maritime Academies</b>			
SMAs Training Vessels Maintenance	30,080,000	30,500,000	420,000
SMAs Training Ship Sharing Offset	8,000,000	8,080,000	80,000
Academy Operations	6,000,000	6,000,000	0
Training Ship Fuel Assistance	3,800,000	3,800,000	0
Student Incentive Payment Program	2,400,000	2,400,000	0
<i>Subtotal</i>	<i>50,280,000</i>	<i>50,780,000</i>	<i>500,000</i>
<b>Total</b>	<b>146,224,000</b>	<b>136,221,000</b>	<b>(10,003,000)</b>

**Source:** P.L. 116-92, §3501; P.L. 116-283, §3501.

**Maritime Personnel Sectional Analysis**

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<b>Sec. 3507</b> would establish the Elijah E. Cummings Merchant Mariner Career Training Loan Program and authorize the designation of certain training establishments as a <i>Maritime Training Institution</i> .	No similar provision	<b>Sec. 3508</b> adopts parts of the House provision, but in lieu of a program, requires a program study and report.

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<b>Sec. 3510</b> would require vessel operator beneficiaries of certain national security programs to take on at least two USMMA cadets per vessel for their sea-time duty.	No similar provision	<b>Sec. 3506</b> adopts the House provision.
<b>Sec. 3510A</b> expresses a sense of Congress that the USMMA superintendent should be a graduate of the Academy who possesses certain qualifications.	No similar provision	<b>Sec. 3503</b> adopts the sense of Congress and adds the term <i>merchant marine</i> and certain merchant marine positions to the qualifications for superintendent.
<b>Sec. 3510B</b> would require the MARAD Administrator to publish information online regarding the status or employment of USMMA graduates, as well as SIP program participation and federal service obligation information for graduates of SMAs.	No similar provision	<b>Sec. 3509</b> adopts the House provision.

**Discussion.** It is the policy of the United States that its Navy and merchant marine work closely together to promote the maximum integration of its sea power forces.<sup>96</sup> The Secretary of Transportation is required to provide education and training for the operation of the merchant marine as a naval and military auxiliary in time of war or national emergency.<sup>97</sup> The Secretary of the Navy is required to ensure that naval officer training and naval science education programs for the operation of merchant vessels as a naval and military auxiliary are available at the USMMA and SMAs.<sup>98</sup>

The House bill (Section 3507) would have amended Title 46 of the U.S. Code by adding a new section establishing the *Elijah E. Cummings Merchant Mariner Career Training Loan Program* in DOT, but the final enacted bill did not adopt this provision. Instead, it directed MARAD to develop a merchant mariner recruitment, training, and retention strategic plan and to produce a study and report on financial assistance for training merchant mariners.

The House bill (Section 3510) was adopted by Section 3506 of the final enacted bill and amends Title 46 of the U.S. Code to require certain vessel operators to carry USMMA cadets for their sea duty. Pursuant to 46 U.S.C. §51307(b), as amended in the final enacted bill, operators of a vessel participating in the maritime programs specified in Chapters 531, 532, and 534 of Title 46 of the U.S. Code are required to carry two USMMA cadets, if available, on each program vessel.

Since its establishment in 1942, USMMA has had 13 superintendents. Less than half served in the merchant marine and less than a third graduated from the Academy (See **Table 6**). Section 3503 of the FY2021 NDAA expresses a sense of Congress that due to the unique mission of USMMA, it is highly desirable that its superintendent be a USMMA graduate in good standing who has attained certain merchant marine licensure.<sup>99</sup> The House bill (Section 3510A) was adopted by Section 3503 of the final enacted bill and amends Title 46 of the U.S. Code by adding this sense of Congress to the qualifications for superintendent. Under 46 USC §51301(c), as amended in the

<sup>96</sup> 46 U.S.C. §51101.

<sup>97</sup> 46 U.S.C. §51103.

<sup>98</sup> 46 U.S.C. §51104.

<sup>99</sup> 46 U.S.C. §7101.

final enacted bill, USMAA graduation and captain, chief mate, or chief engineer licensure in the merchant marine are now among the express superintendent qualifications.

**Table 6. Career and Training Backgrounds of USMMA Superintendents**  
Maritime, Military, and Education Information

13 USMMA Superintendents Appointed from 1942 to 2021				
Merchant Mariner	Armed Forces Service			
	Navy	Coast Guard	Marine Corps	Army
6 out of 13	9	2	1	1
Post-Secondary Education				
USMMA	USNA	USCGA	USMA	Other Schools
4	3	2	1	3

**Source:** Jeffery L. Cruikshank, Chloe G. Kline, *In Peace and War: A History of the U.S. Merchant Marine Academy at Kings Point* (New Jersey: John Wiley & Sons, Inc., 2008); Email to CRS from Office of the Superintendent, U.S. Merchant Marine Academy, Kings Point, New York, December 2, 2020.

**Notes:** USNA denotes U.S. Naval Academy; USCGA, U.S. Coast Guard Academy; and USMA, U.S. Military Academy.

Section 3509 of the FY2021 NDAA requires the MARAD Administrator to make available on a public website, not later than January 1, 2022, information regarding the number of USMMA and SMAs graduates for the preceding five years, who are employed in, or whose status qualifies under, the following categories: unknown, non-maritime, maritime afloat, maritime ashore, graduate studies, and the armed forces of the United States.

This section also requires information on the public website regarding the number of students at SMAs who are receiving SIP program funds, or have received such funds in the preceding five years. Likewise, the number of SMAs students who graduated with a federal service obligation, and the number who did not, is required on the website, to include the number of SMAs students who received partial SIP program payments and graduated without a federal service obligation.

**References:** See CRS Insight IN11416, *Maritime Administration’s Ready Reserve Sealift Fleet*, by John Frittelli.

**Point of Contact:** Alan Ott.

## Defense Civilians

**Background.** The civil service consists of three categories: competitive service, excepted service, and senior executive service (SES). The competitive service is the primary and largest civil service category. The other categories are excluded from it by statute, the President, or the Office of Personnel Management (OPM). The excepted service is the next largest category, and its selection procedures differ from the ones used in the competitive service. The smallest category is the SES—less than one percent of the civil service. Selection for the SES is based on an OPM-regulated merit staffing procedure and qualifications review board (QRB). The stated purpose of the QRB is to verify and certify an SES aspirant’s executive core qualifications (ECQs).

DOD may employ defense civilians consistent with its yearly appropriation for direct hire employees. They fill positions that do not require military personnel. The majority of defense civilians is in the competitive service (82%). Most civil service appointments in DOD are made under Title 5 of the U.S. Code. The remaining appointments typically are made for specialized

workforces, such as cyber, acquisition, and intelligence, under Title 10 of the U.S. Code. Defense civilians perform federal functions under the supervision of a servicemember or another defense civilian. Defense civilians may exercise management or supervisory authority over servicemembers when authorized, but they do not have command or military justice authority over them.

There are two common methods for enumerating civil servants: *full-time equivalent* (FTE) and *on-board personnel* (OBP). The executive branch typically uses FTE in budget documents and OBP in data reports. A FTE unit equals one work year (2,080 hours) and an OBP unit equals one employee. The FTE method quantifies employment as the number of hours worked at the end of a fiscal year, irrespective of the number of employees. The OBP method quantifies employment as the number of actual employees working on the last day of any quarter in a fiscal year, regardless of their part or full-time status.

**Table 7. Defense Civilian FTE and OBP Units**  
U.S. Direct Hire and Foreign Direct Hire Civilian Employees

DOD Component	FTE – FY2020	OBP – 30 Sep 2020
Defense	217,300	113,640
Army	180,800	252,247
Navy	207,000	225,284
Air Force	169,800	172,857
Total	774,900	764,028

**Source:** DOD Budget Overview for FY2021, p. 2-8, available at [https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/fy2021\\_Budget\\_Request\\_Overview\\_Book.pdf](https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/fy2021_Budget_Request_Overview_Book.pdf) (accessed March 16, 2021); Defense Manpower and Data Center (DMDC), Number of Military and DoD Appropriated Fund (APF) Civilian Personnel Permanently Assigned, As of September 30, 2020, at <https://dwp.dmdc.osd.mil/dwp/app/dod-data-reports/workforce-reports> (accessed March 16, 2021)

**Notes:** FTE numbers were rounded by source. Navy numbers includes Marine Corps employees.

**Civilian Personnel Sectional Analysis**

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<b>Sec. 516</b> would allow the establishment of a pilot program to extend state job placement programs to members of the Selected Reserve.	No similar provision	<b>Sec. 518</b> adopts the House provision subject to a Senate amendment for a 50% federal and 50% state cost share, with a report required not later than Mar 1, 2022
<b>Sec. 911</b> would prohibit civilian workforce reductions without appropriate analysis of the impacts of such reductions on workload, military force structure, lethality, readiness, operational effectiveness, stress on the military force, and fully burdened costs.	No similar provision	<b>Sec. 912</b> adopts the House provision.
<b>Sec. 1102</b> would prohibit DOD from excluding collective bargaining rights by defunding any such action.	No similar provision	Not adopted

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
No similar provision	<b>Sec. 1106</b> would extend the authority of the Secretary of Defense to appoint up to 50 senior executives per year without board certification from the Office of Personnel Management.	<b>Sec. 1118</b> adopts the Senate provision.
<b>Sec. 1107</b> would include Defense Security Cooperation University and Institute of Security Governance civilian faculty in existing authorities for compensation at DOD academic institutions.	No similar provision	<b>Sec. 1107</b> adopts the House Provision with commentary and a March 1, 2021, briefing requirement.
<b>Sec. 1108</b> would waive the requirement that retired or separated servicemembers wait 180 days before filling civilian positions for any industrial base facility if there is shortage of applicants.	<b>Sec. 1108</b> is similar to House Sec. 1108.	<b>Sec. 1108</b> adopts the House provision subject to a Senate amendment that such positions are at the GS-13 level and below.
<b>Sec. 1109</b> would create an alternative work schedule demonstration project for certain Navy firefighters.	<b>Sec. 1110A</b> is similar to House Sec. 1109.	<b>Sec. 1109</b> adopts both provisions.
No similar provision	<b>Sec. 1107</b> would authorize DOD to establish a pilot program offering higher compensation than normally allowed for limited numbers of positions requiring extremely high levels of experience managing complex organizations.	<b>Sec. 1119</b> adopts the Senate provision

**Discussion.** It is DOD policy to use civilian employees in all positions that do not require military incumbents for reasons of law, training, security, discipline, rotation, or combat readiness, or that do not require a military background for successful performance of the duties involved.<sup>100</sup> In carrying out their responsibilities for civilian personnel management, DOD managers are governed by DOD policy and the merit system principles in Title 5 of the U.S. Code.<sup>101</sup>

The House bill (Section 516) allows DOD to establish a pilot program for states to establish or expand job placement programs and related employment services for members of the Selected Reserve. Section 518 of the FY2021 NDAA adopts the provision subject to a cost share provision and authorizes the Secretary of Defense to carry out a pilot program to enhance the efforts of DOD to provide job placement assistance and related employment services directly to members of the National Guard and Reserves in reserve active-status. If the pilot program is established, the Secretary, in coordination with the Chief of the National Guard Bureau, shall submit to the HASC and SASC a report describing the results of the pilot program not later than March 1, 2022.

The House bill (Section 911) prohibits the Secretary of Defense from reducing the civilian workforce unless the DOD assesses the impact of such an action based on a number of factors

<sup>100</sup> Department of Defense, *Directive 1400.05, DOD Policy for Civilian Personnel*, §3, January 12, 2005.

<sup>101</sup> 5 U.S.C. §2301(b).

specified in the provision. Section 912 of the FY2021 NDAA adopts this provision. Pursuant to 10 U.S.C. §129a, as amended, the Secretary may not reduce the DOD civilian workforce unless the Secretary conducts an appropriate analysis of the impacts of such reductions on workload, military force structure, lethality, readiness, operational effectiveness, stress on the military force, and fully burdened costs.

The Senate bill (Section 1106) would have extended the sunset provision of Section 1109 of the FY2019 NDAA. Section 1118 of the FY2021 NDAA allows DOD to appoint no more than fifty SES appointments per year under Title 5 of the U.S. Code without certification by an Office of Personnel Management (OPM) senior executive service (SES) qualification review board for three years beyond August 13, 2020.

The House bill (Section 1107) expands the list of covered institutions for which DOD may establish administratively determined positions. Section 1107 of the FY2021 NDAA adopts this provision. Under 10 U.S.C. §1595, as amended, the Defense Security Cooperation University and Defense Institute for Security Governance are added to the list of covered institutions employing civilian faculty.

The House bill (Section 1108) would have allowed servicemembers to accept a civil service appointment to specified positions within 180 days of retiring or separating. Section 1108 of the FY2021 NDAA authorizes the Secretary of Defense to appoint retired servicemembers to DOD positions classified at or below GS-13, or an equivalent level under another pay plan, in the competitive service at certain defense industrial base facilities that have been certified by the Secretary of the military department concerned as lacking sufficient numbers of potential applicants.

The House bill (Section 1109) authorizes an alternative work schedule demonstration project for certain Navy fire fighters. Section 1109 of the FY2021 NDAA adopts this provision and requires the Commander, Navy Region Mid-Atlantic to establish and carry out a fire fighters alternative work schedule demonstration project for the Navy Region Mid-Atlantic Fire and Emergency Services. The demonstration project is to be established not later than 180 days after January 1, 2021, and to exist for a period of not less than five years.

The Senate bill (Section 1107) authorizes DOD to establish a pilot program offering higher compensation than normally allowed by the executive schedule for a limited number of positions. Section 1119 of the FY2021 NDAA allows the Secretary of Defense to carry out a pilot program to assess the feasibility and advisability of using the enhanced pay authority. The enhancement would increase the rate of basic pay for certain agency level executive positions to attract and retain executives with certain skills and abilities.

**References:** See CRS In Focus IF11510, *Defense Primer: Department of Defense Civilian Employees*, by Alan Ott and CRS Report R45635, *Categories of Federal Civil Service Employment: A Snapshot*, by Jon O. Shimabukuro and Jennifer A. Staman

**Point of Contact:** Alan Ott.

## Defense Health Care and Public Health

The HASC and SASC have jurisdiction over military health care, the Defense Health Agency and the Defense Health Program, as well as the DOD Retiree Health Care Fund and the Armed Forces

Retirement Home.<sup>102</sup> DOD health care and related veterans’ health matters are a significant portion of the FY2021 NDAA and various provisions address a wide range of health care and public health issues.

## Military Health System Administration

**Background.** DOD operates a health care delivery system that serves approximately 9.6 million beneficiaries.<sup>103</sup> The Military Health System (MHS) administers the TRICARE program, which offers health care services at military treatment facilities (MTFs) or through participating civilian health care providers.<sup>104</sup> Historically, the military services have administered the MTFs, while the Defense Health Agency<sup>105</sup> (DHA) administered the private sector care program of TRICARE. DHA describes itself as a combat support agency that enables the Army, Navy, and Air Force medical services to provide a *medically ready force* and *ready medical force* to combatant commands in both peacetime and wartime.<sup>106</sup>

In 2016, Congress found that the organizational structure of the MHS could be streamlined to sustain the “medical readiness of the Armed Forces, improve beneficiaries’ access to care and the experience of care, improve health outcomes, and lower the total management cost.”<sup>107</sup>

Subsequently, Congress directed numerous reforms for the MHS, including:

- transfer of administration and management of MTFs from each respective service surgeon general to the DHA Director;
- reorganization of DHA’s internal structure; and
- redesignation of the service surgeons general as principal advisor for their respective military service and as service chief medical advisor to the DHA.<sup>108</sup>

Congress also directed DOD to implement most reforms no later than September 30, 2021. On October 25, 2019, the military services transferred the administration and management of their U.S.-based MTFs to the DHA.<sup>109</sup> The military services are to continue to administer their overseas MTFs until transfer to the DHA in 2020-2021.<sup>110</sup>

### Military Health System Administration Sectional Analysis

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<b>Organizational Management</b>		

<sup>102</sup> U.S. Senate, *Document 113-18, Standing Rules of the Senate*, January 24, 2013, p. 20 U.S. House of Representatives, *Rules of the House of Representatives*, January 11, 2019, p. 6; RCP 116-25, *Rules Adopted by the Committees of the House of Representatives of the United States, 116th Congress, 2019-2020*, p. 37.

<sup>103</sup> DOD, *Evaluation of the TRICARE Program: Fiscal Year 2020 Report to Congress*, June 9, 2020, p. 21.

<sup>104</sup> For more on TRICARE, see CRS In Focus IF10530, *Defense Primer: Military Health System*, by Bryce H. P. Mendez.

<sup>105</sup> Prior to the creation of the Defense Health Agency (DHA) in 2013, the TRICARE Management Activity (TMA) was the DOD organization that administered the TRICARE program.

<sup>106</sup> For more on the DHA, see <https://health.mil/About-MHS/OASDHA/Defense-Health-Agency>.

<sup>107</sup> H.Rept. 114-840, p. 1066.

<sup>108</sup> 10 U.S.C. §1073c; and Sections 711 and 712 of the John S. McCain NDAA for FY 2019 (P.L. 115-232). See also Deputy Secretary of Defense Memorandum, *Continuing Implementation of the Reform of the Military Health System*, October 25, 2019, at <https://go.usa.gov/x7GQS>.

<sup>109</sup> Deputy Secretary of Defense Memorandum, *Continuing Implementation of the Reform of the Military Health System*, October 25, 2019.

<sup>110</sup> *Ibid.*

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<p><b>Sec. 714</b> would amend 10 U.S.C. § 1093c(e) by extending to September 30, 2025, the deadline for the Defense Health Agency (DHA) to establish subordinate entities that consolidate certain Research and Development activities and Public Health activities.</p>	<p><b>Sec. 721</b> is a similar provision to House Sec. 714 that would extend the deadline to September 30, 2024; and amends Sec. 737 of the FY2020 NDAA to clarify the preservation of certain Department of the Army medical resources.</p>	<p>Not adopted. Deadline remains September 30, 2022.</p>
<p><b>Sec. 716</b> would amend Section 703(d) of the FY2019 NDAA (P.L. 115-232) by establishing a <i>notice-and-wait</i> process and revising the elements of the implementation plan for restructure or realignment of military treatment facilities (MTFs).</p>	<p>No similar provision</p>	<p><b>Sec. 718</b> adopts House Sec. 716 with an amendment that requires the Secretary of Defense to certify to the congressional defense committees that beneficiaries will be able to access health care services if an MTF is restructured or realigned.</p>
<p><b>Sec. 719</b> would amend 10 U.S.C. § 1073d by requiring the maintenance of certain MTFs at U.S. military service academies.</p>	<p>No similar provision</p>	<p>Not adopted</p>
<p>No similar provision</p>	<p><b>Sec. 722</b> would amend Section 713(c) of the FY2019 NDAA (P.L. 115-232) to delay the transition of the TRICARE Dental Program to the Federal Employees Dental and Vision Insurance Program (FEDVIP) to January 1, 2023.</p>	<p><b>Sec. 711</b> adopts Senate Sec. 722 with an amendment that replaces the originally proposed provision with a provision that repeals the administration of TRICARE Dental Program benefits through FEDVIP.</p>
<p>No similar provision</p>	<p><b>Sec. 742</b> would amend 10 U.S.C. § 2113a(b) to add the Defense Health Agency Director as an ex-officio member of the Uniformed Services University of the Health Sciences (USUHS) Board of Regents.</p>	<p><b>Sec. 715</b> adopts Senate Sec. 742.</p>
<b>Military Medical Personnel</b>		
<p><b>Sec. 715</b> would amend Section 719 of the FY2019 NDAA (P.L. 115-232) by extending certain limitations on changes to the military medical end-strength for a one-year period after enactment.</p>	<p>No similar provision</p>	<p><b>Sec. 717</b> adopts House Sec. 715 with an amendment to prohibit any military medical end-strength reductions within 180 days after enactment.</p>
<b>Civilian Partnerships</b>		
<p><b>Sec. 731</b> would amend Section 740 of the FY2020 NDAA (P.L. 116-92) to require DOD to conduct a pilot program, no later than 180 days after enactment, using military-civilian partnerships to enhance interoperability and medical surge capabilities of the National Disaster Medical System.</p>	<p><b>Sec. 744</b> is a similar provision to House Sec. 731 that would require a pilot program no later than September 30, 2021.</p>	<p><b>Sec. 741</b> adopts Senate Sec. 744 with an amendment to require DOD to submit an initial report to Congress within 180 days after the pilot program commences and a final report within 180 days after the pilot program is completed.</p>

**Discussion.** The House and Senate bills include a number of provisions to delay or clarify certain congressionally directed or DOD-initiated reform efforts.

**Organizational Management.** In 2018, Congress directed DOD to consolidate most of its medical research and public health programs under the DHA by September 30, 2022.<sup>111</sup> Section 714 of the House bill would have extended to September 30, 2025, the deadline for DHA to establish a formal research and development entity and public health entity, comprised of service-administered organizations. Section 721 of the Senate bill would have extended the deadline to September 30, 2024. The FY2021 NDAA adopts neither House Section 714 nor Senate Section 721.

On February 19, 2020, DOD submitted its plan to restructure selected MTFs as required by Section 703(d) of the FY2017 NDAA (P.L. 114-328).<sup>112</sup> The plan identifies 50 MTFs for restructuring over the next several years, with 43 slated for downsizing, one for capability enhancements, one for recapitalization, and five for closure.<sup>113</sup> Section 716 of the House bill modifies the requirements for DOD's implementation plan to restructure its MTFs. Such modifications include a discussion on local health care capacity and quality in the case of a reduction of DOD services. The provision also establishes a "notice and wait" period (i.e., after the implementation plan is resubmitted to Congress and one year after enactment) before DOD can proceed with MTF restructuring. Section 718 of the FY2021 NDAA adopts this provision with an amendment requiring the Secretary of Defense to certify to the congressional defense committees that beneficiaries will be able to access health care services if an MTF is restructured or realigned. The amendment also revises the notice and wait period to the later of 180 days after (1) DOD submits its implementation plan and certification, or (2) the enactment of the FY2021 NDAA.

Section 719 of the House bill would have required DOD to maintain MTFs at the Service Academies if no civilian health care facilities within five miles have the following medical capabilities: emergency care; orthopedics; general surgery; ear, nose, and throat services; gynecology; ophthalmology; inpatient care; and any other services deemed necessary by a respective Service Academy Superintendent.<sup>114</sup> The FY2021 NDAA did not adopt this provision.

The FY2019 NDAA directed the transition of DOD's voluntary dental benefit for family members and military reservists from the TRICARE Dental Program to the Office of Personnel Management's Federal Employees Dental and Vision Insurance Program (FEDVIP) by January 1, 2022.<sup>115</sup> Section 723 of the Senate bill would have extend the deadline for DOD to transition to FEDVIP to January 1, 2023. Section 711 of the FY2021 NDAA replaces the originally proposed

<sup>111</sup> P.L. 114-328, §711.

<sup>112</sup> DOD, *Restructuring and Realignment of Military Medical Treatment Facilities*, February 19, 2020, at <https://health.mil/About-MHS/OASDHA/Defense-Health-Agency/Congressional-Relations/Restructuring-and-Realignment-of-Military-Medical-Treatment-Facilities>.

<sup>113</sup> For an overview of DOD's plan, see CRS In Focus IF11458, *Military Health System Reform: Military Treatment Facilities*, by Bryce H. P. Mendez.

<sup>114</sup> In this section, the term "Service Academies" refers to those specified in 10 U.S.C. §341: the United States Military Academy, United States Naval Academy, and United States Air Force Academy. DOD does not administer health care services at the remaining two federal service academies (i.e., U.S. Coast Guard Academy and U.S. Merchant Marine Academy). Those academies' respective parent organizations administer their health services program.

<sup>115</sup> P.L. 115-232 §713(c). For more on the TRICARE Dental Program, see <https://tricare.mil/CoveredServices/Dental/TDP>. For more on the Federal Employee Dental and Vision Insurance Program (FEDVIP), see <https://www.benefeds.com/education-support/dental-vision>.

provision with an amendment that repeals 5 U.S.C. §8951(8) and 10 U.S.C. §1076a(b), no longer requiring DOD to provide its TRICARE Dental Program through FEDVIP.<sup>116</sup>

With regard to the administration and management of the Uniformed Services University of the Health Sciences (USUHS), a Board of Regents is statutorily required to advise the Secretary of Defense on the university's academic and administrative matters.<sup>117</sup> Currently, the Board includes 15 members: nine voting members (civilians not currently affiliated with DOD), and six ex-officio (non-voting) members that include the Secretary of Defense, USUHS President, and the surgeons general of the uniformed services, or their designees.<sup>118</sup> Section 742 of the Senate bill amends 10 U.S.C. §2113a(b) to add the DHA Director as an ex-officio member of the USUHS Board of Regents. Section 715 of the FY2021 NDAA adopts this provision.

**Military Medical Personnel.** DOD's budget request for FY2021 includes a proposal to reduce its active duty medical force by 9.6% (7,422 personnel) in order to maintain a workforce that is "appropriately sized and scoped to meet NDS [National Defense Strategy] requirements as well as allow the MHS to optimize operational training and beneficiary care delivery."<sup>119</sup> Compared to FY2020 levels, the Navy would have the largest reduction in medical personnel (-12.5%), followed by the Army (-12.0), and the Air Force (-4.6%).<sup>120</sup> To mitigate potential impacts on beneficiary care resulting from active duty medical force reductions, the Assistant Secretary of Defense for Health Affairs has directed the DHA to work with the military departments on alternatives to access health care (i.e., MTF care provided by civil servant employees and contractors, expansion of the TRICARE network, partnerships with local civilian health systems).<sup>121</sup>

In the FY2020 NDAA, Congress enacted limitations on DOD's ability to reduce or realign its active duty medical force until certain reviews, analyses, measurements, and outreach actions are completed.<sup>122</sup> However, the law did provide certain exceptions to proceed with force reductions, such as historically vacant, nonclinical, and headquarters-assigned positions.<sup>123</sup> Section 715 of the House bill prohibits active duty medical force reductions for one year after enactment. After one year, DOD is able to reduce or realign positions after meeting the requirements established in the

<sup>116</sup> 5 U.S.C. §8951(8) defines certain TRICARE beneficiaries as being eligible individuals for FEDVIP. 10 U.S.C. §1076a(b) directs the Secretary of the Defense to administer the TRICARE Dental Program through FEDVIP.

<sup>117</sup> 10 U.S.C. §2113a. For more on the Uniformed Services University of the Health Sciences (USUHS), see CRS In Focus IF11385, *The Uniformed Services University of the Health Sciences*, by Bryce H. P. Mendez.

<sup>118</sup> The surgeons general of the uniformed services include the Army Surgeon General, Navy Surgeon General, Air Force Surgeon General, and the U.S. Coast Guard Director of Health, Safety, and Work-Life.

<sup>119</sup> <sup>119</sup> DOD, *Defense Health Program Fiscal Year (FY) 2021 Budget Estimates*, Jan 31, 2020, p. DHP-1, at [https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/budget\\_justification/pdfs/09\\_Defense\\_Health\\_Program/Vol\\_I\\_Sec\\_9\\_PB-11A\\_Personnel\\_Summary\\_DHP\\_PB21.pdf](https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/budget_justification/pdfs/09_Defense_Health_Program/Vol_I_Sec_9_PB-11A_Personnel_Summary_DHP_PB21.pdf); and DOD, *Defense Budget Overview*, Feb 2020, p. 2-5.

<sup>120</sup> DOD, *Defense Health Program Fiscal Year (FY) 2021 Budget Estimates*, January 31, 2020, p. DHP-1. For an overview of DOD's FY2020 proposal to reduce or realign the active duty medical force, see CRS Insight IN11115, *DOD's Proposal to Reduce Military Medical End Strength*, by Bryce H. P. Mendez and CRS Report WPD00015, *Reductions in the Military Medical Workforce*, by Bryce H. P. Mendez.

<sup>121</sup> U.S. Congress, House Committee on Appropriations, Subcommittee on Defense, *Defense Health Program (DHP)*, prepared by Mr. Thomas McCaffery and Lieutenant General Ronald Place, 116th Cong., 2nd sess., March 5, 2020, pp. 5-6, at <https://docs.house.gov/meetings/AP/AP02/20200305/110625/HHRG-116-AP02-Wstate-McCafferyT-20200305.pdf>.

<sup>122</sup> P.L. 116-92, §719.

<sup>123</sup> *Ibid.*

FY2020 NDAA.<sup>124</sup> Section 717 of the FY2021 NDAA adopts this provision with an amendment prohibiting any military medical end-strength reductions or realignment within 180 days after enactment.

**Civilian Partnerships.** The MHS states that its “success depends on building strong partnerships with the civilian health care sector.”<sup>125</sup> As a high-priority initiative, the MHS maintains numerous partnerships with civilian health care organizations, academic institutions, and research entities to enhance or supplement military medical readiness and deliver the health entitlements authorized in Chapter 55 of Title 10, U.S. Code.<sup>126</sup> Both bills include provisions to revise existing DOD authorities to conduct a voluntary pilot program to improve medical surge capabilities of the National Disaster Medical System and interoperability with certain civilian health care organizations and other federal agencies.<sup>127</sup> Section 740 of the House bill would have required DOD to conduct a pilot program within 180 days after enactment. Section 744 of the Senate bill requires DOD to conduct a pilot program no later than September 30, 2021. Section 741 of the FY2021 NDAA adopts Senate Section 744 with an amendment requiring DOD to submit an initial report to Congress within 180 days after the pilot program commences and a final report within 180 days after the pilot program is completed.

**References:** See CRS Report R46107, *FY2020 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Bryce H. P. Mendez; CRS In Focus IF11273, *Military Health System Reform*, by Bryce H. P. Mendez; CRS In Focus IF11458, *Military Health System Reform: Military Treatment Facilities*, by Bryce H. P. Mendez; and CRS Insight IN11115, *DOD’s Proposal to Reduce Military Medical End Strength*, by Bryce H. P. Mendez.

**CRS Point of Contact:** Bryce H. P. Mendez.

## Military Treatment Facility Billing

**Background.** In certain situations, military treatment facilities (MTFs) may provide care to non-beneficiaries (i.e., civilians). Typically, limited MTF care is available to DOD civil service employees or others through partnerships with civilian health care organizations, graduate medical education or clinical skills sustainment programs, the Secretarial Designee program,<sup>128</sup> or emergency medical care providers. When MTF care is provided to non-beneficiaries, DOD is required to charge certain fees to those individuals (or their insurers). The fees, also referred to as “reasonable charges,” are to represent the “costs, as determined by the Secretary [of Defense], of trauma and other medical care provided to such civilians.”<sup>129</sup> DOD is also required to collect such reasonable charges from non-beneficiaries (less any third-party payments) in accordance with general federal debt collection statutes and regulations.<sup>130</sup> Procedures in the Code of Federal

<sup>124</sup> Ibid.

<sup>125</sup> MHS, “Initiatives and Areas of Impact,” accessed August 30, 2020, at <https://www.health.mil/About-MHS/MHS-Initiatives>.

<sup>126</sup> Ibid.

<sup>127</sup> P.L. 116-92, §740.

<sup>128</sup> The *Secretarial Designee program* allows the Secretary of Defense, Service Secretaries, or their designees, to authorized limited MTF care for non-beneficiaries. For more on the *Secretarial Designee program*, see DOD Instruction 6025.23, *Health Care Eligibility Under the Secretarial Designee Program and Related Special Authorities*, updated May 28, 2020, at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/602523p.pdf?ver=2019-03-22-095347-850>.

<sup>129</sup> 10 U.S.C. §1079b and 32 C.F.R. § 220.8.

<sup>130</sup> 31 U.S.C. §3711 and Parts 900-904 of Title 31, Code of Federal Regulations (Federal Claims Collection Standards).

Regulations (C.F.R.) require prompt and “aggressive” action to collect any debt owed to the United States Government, including the transfer of delinquent debt (i.e., 180 days past due) to the Department of the Treasury for further adjudication and collection efforts.<sup>131</sup> The Treasury Department can, and does, use a wide range of collection activities (e.g., debt collection services, credit agency reporting, wage garnishment, or litigation) that may occur more rapidly than in the private health care market.<sup>132</sup>

In several Government Accountability Office (GAO) and DOD Inspector General Reports, MTFs were found to have longstanding billing challenges that often resulted in low debt collection rates.<sup>133</sup> In recent years, Congress has authorized DOD to expand the provision of limited MTF care to civilians in an effort to sustain DOD’s graduate medical education programs and support clinical skills sustainment for military health care providers.<sup>134</sup> As MTFs establish additional clinical training and readiness programs and opt to see more non-beneficiaries, *surprise billing* and low debt collection rates may be an ongoing challenge for DOD.<sup>135</sup>

### Military Treatment Facility Billing Sectional Analysis

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<b>Billing Non-Beneficiaries</b>		
<b>Sec. 705</b> would amend 10 U.S.C. § 1079b to allow DOD to waive certain fees charged to civilian patients for emergency medical care received at MTFs.	<b>Sec. 703</b> is an identical provision to House Section 705.	<b>Sec. 702</b> adopts House Sec. 705.
No similar provision	<b>Sec. 751</b> would require the Comptroller General to assess DOD’s provision of emergency medical care to non-beneficiaries in military treatment facilities.	<b>Sec. 749</b> adopts Senate Sec. 751.
<b>Billing Beneficiaries</b>		
No similar provision	<b>Sec. 752</b> would require the Comptroller General to assess TRICARE and military treatment facility billing practices.	<b>Sec. 758</b> adopts Senate Sec. 752 with an amendment that omits the “Findings” and “Sense of Congress” paragraphs.

<sup>131</sup> Ibid. 32 C.F.R. §901.1 requires federal agencies to “aggressively collect all debts arising out of activities of, or referred or transferred for collection services to, that agency.”

<sup>132</sup> 31 C.F.R. §901.1 and Department of the Treasury, “Debt Collection Legal Authorities Quick Reference Charts,” accessed March 29, 2021, at <https://www.fiscal.treasury.gov/dms/resources/debt-collection-legal-auth-qrc.html>.

<sup>133</sup> See U.S. Government Accountability Office, *Military Treatment Facilities: Improvements Needed to Increase DOD Third-Party Collections*, GAO-04-322R, February 20, 2004, at <https://www.gao.gov/products/GAO-04-322R>; DOD Inspector General, *Audit of DoD’s Management of the Third Party Collection Program for Medical Claims*, DODIG-2019-108, September 16, 2019, at <https://media.defense.gov/2019/Sep/18/2002184083/-1/-1/1/DODIG-2019-108.PDF>; DOD Inspector General, *Follow-up of Delinquent Medical Service Account Audits*, DODIG-2019-038, at <https://media.defense.gov/2018/Dec/21/2002075273/-1/-1/1/DODIG-2019-038.PDF>; and DOD Inspector General, *Delinquent Medical Service Accounts at Naval Medical Center Portsmouth Need Additional Management Oversight*, March 4, 2015, at <https://media.defense.gov/2015/Mar/04/2001713473/-1/-1/1/DODIG-2015-087.pdf>.

<sup>134</sup> For example, Section 717 of the FY2017 NDAA (P.L. 114-328) authorized DOD to evaluate and treat veterans and civilians in MTFs in order to support the readiness of military medical providers.

<sup>135</sup> *Surprise billing* refers to a situation in which a consumer is “unknowingly, and potentially unavoidably, treated by a provider outside the consumer’s health insurance plan network, and as a result, unexpectedly receives a larger bill than he or she would have received if the provider had been in the plan network.” For more on surprise billing, see CRS Report R46116, *Surprise Billing in Private Health Insurance: Overview and Federal Policy Considerations*, by Ryan J. Rosso, Noah D. Isserman, and Wen W. Shen.

**Discussion.** The House and Senate bills include several provisions to enhance Congress’s understanding of DOD’s health care billing practices and a proposed authority to waive certain billing requirements.

**Billing Non-Beneficiaries.** Section 705 of the House bill and Section 703 of the Senate bill are identical provisions to amend 10 U.S.C. §1079b by authorizing DOD MTFs to waive certain fees when MTF care is provided to non-beneficiaries. The provisions allow a fee waiver if after third-party collections (i.e., health insurance payments) are received, the patient is unable to pay any outstanding balance or charges, and, if the care provided “enhanced the medical readiness” of DOD’s health care providers. Section 702 of the FY2021 NDAA adopts this provision.

Section 751 of the Senate bill requires the Comptroller General to assess, no later than one year after enactment, DOD’s provision of MTF emergency medical care to non-beneficiaries from October 1, 2015, to September 30, 2020. A report to Congress is required, no later than 180 days after the completed assessment. The report is to include an assessment of DOD’s debt recovery processes, total fees charged and collected, debt collected through wage garnishments and other means, waivers issued for outstanding debt, debt transferred to the Department of the Treasury, demographic data of non-beneficiaries that received MTF care, and other information that may be appropriate. Section 749 of the FY2021 NDAA adopts this provision.

**Billing Beneficiaries.** Section 752 of the Senate bill requires the Comptroller General to assess and report to Congress, no later than one year after enactment, on DOD’s health care billing practices, including the implementation status of previous DOD Inspector General recommendations to improve third-party collections, and how third-party liability claims are adjudicated.<sup>136</sup> Section 758 of the FY2021 NDAA adopts this provision with an amendment that omits the “Findings” and “Sense of Congress” paragraph of the Senate provision.

**References:** See DOD, *Pilot Program on Increased Third-Party Collection Reimbursements in Military Medical Treatment Facilities*; DOD Instruction 6015, *Foreign Military Personnel Care and Uniform Business Offices in Military Treatment Facilities*, February 23, 2015; and Defense Health Agency Procedural Manual 6015.01, *Military Medical Treatment (MTF) Uniform Business Office (UBO) Operations*, October 24, 2017.

**CRS Point of Contact:** Bryce H. P. Mendez.

## Mental Health

**Background.** Congress has a long history of funding and authorizing numerous DOD, Department of Veterans Affairs (VA), and Substance Abuse and Mental Health Services Administration (SAMHSA) mental health programs and services that support servicemembers, veterans, and their families.<sup>137</sup> DOD administers or funds approximately 200 mental health programs that offer education, awareness, and prevention efforts; clinical treatment; nonclinical support and counseling services; and research and development.<sup>138</sup>

<sup>136</sup> Previous DOD Inspector General recommendations are those included in the reports listed in footnote **Error! Bookmark not defined.**

<sup>137</sup> The term *mental health* used in this report is used synonymously with *behavioral health* and *psychological health*.

<sup>138</sup> DOD, *Report on Improvements in the Identification and Treatment of Mental Health Conditions and Traumatic Brain Injury Among Members of the Armed Forces*, October 2017, p. 1, at <https://health.mil/About-MHS/OASDHA/Defense-Health-Agency/Congressional-Relations/Reports-to-Congress/Signed-in-2017>. The various DOD entities that administer mental health programs include (but are not limited to) the Defense Health Agency, personnel and medical departments of the military services, National Guard Bureau, the Office of the Under Secretary

DOD has estimated that, from 2007 to 2016, 853,060 active duty servicemembers were newly diagnosed with at least one mental health disorder.<sup>139</sup> Military reservists<sup>140</sup> also experience similar mental health issues with additional stressors that may not be as prevalent among active duty servicemembers.<sup>141</sup> In a 2014 DOD health-related behaviors survey of reserve component personnel, 9.3% of reservists experienced “high anxiety,” 4.8% reported “high depression,” and 3.7% reported an attempted suicide during their lifetime.<sup>142</sup>

DOD has made numerous efforts to address the wide range of mental health issues, however opportunities for improvement have been highlighted by the GAO,<sup>143</sup> DOD Inspector General,<sup>144</sup> and other observers of military and veterans’ health.<sup>145</sup>

**Mental Health Sectional Analysis**

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<b>General Mental Health</b>		
<b>Sec. 701</b> would amend 10 U.S.C. § 1074m to require mental health assessments for servicemembers who have participated in certain combat support activities.	No similar provision	Not adopted

of Defense for Personnel and Readiness, Uniformed Services University of the Health Sciences, state National Guard offices, and the Combatant Commands.

<sup>139</sup> Stahlman, Shauna, "Mental Health Disorders and Mental Health Problems, Active Component, U.S. Armed Forces, 2007-2016," *Medical Surveillance Monthly Report*, vol. 25, no. 3 (March 2018), p. 4, at <https://health.mil/Reference-Center/Reports/2018/01/01/Medical-Surveillance-Monthly-Report-Volume-25-Number-3>. These mental health issues included adjustment disorders (27.9%), depressive disorders (16.8%), anxiety disorders (14.9%), “other” mental health disorders (14.6%), alcohol-related disorders (9.9%), post-traumatic stress disorder (PTSD; 8.3%), substance abuse disorders (3.3%), personality disorders (2.2%), bipolar disorders (1.2%), psychotic disorder (0.7%), and schizophrenia (0.2%).

<sup>140</sup> The term *military reservists* used throughout this section refers to the members of the reserve components of the Armed Forces (i.e., Army Reserve, Navy Reserve, Marine Corps Reserve, Air Force Reserve, Coast Guard Reserves, Army National Guard, and Air National Guard). For more on the reserve components, see CRS In Focus IF10540, *Defense Primer: Reserve Forces*, by Lawrence Kapp.

<sup>141</sup> Defense Health Agency, *2014 Health related Behaviors Survey of Reserve Component Personnel*, Total Reserve Component Executive Summary Report, 2015, pp. 13-15, at <https://www.health.mil/Reference-Center/Reports/2016/05/08/2014-Total-Reserve-Component-Report>. Such stressors may include, for example, “Change in my work load,” “Conflicts between my military responsibilities and my family/personal responsibilities,” “Being away from my family, and friends,” and “Insufficient training.”

<sup>142</sup> *Ibid*, p. 21.

<sup>143</sup> See U.S. Government Accountability Office (GAO), *Human Capital: Additional Actions Needed to Enhance DOD's Efforts to Address Mental Health Care Stigma*, GAO-16-404, April 18, 2016, at <https://www.gao.gov/assets/680/676633.pdf>; GAO, *Defense Health Care: DOD Is Meeting Most Mental Health Care Access Standards, but It Needs a Standard for Follow-up Appointments*, GAO-16-416, April 28, 2016, at <https://www.gao.gov/assets/680/676851.pdf>; and GAO, *Department of Defense: Eating Disorders in the Military*, GAO-20-611R, August 7, 2020, at <https://www.gao.gov/assets/710/708697.pdf>.

<sup>144</sup> See DOD Inspector General, *Evaluation of Access to Mental Health Care in the Department of Defense*, August 10, 2020, at [https://media.defense.gov/2020/Aug/12/2002475605/-1/-1/1/DODIG-2020-112\\_REDACTED.PDF](https://media.defense.gov/2020/Aug/12/2002475605/-1/-1/1/DODIG-2020-112_REDACTED.PDF).

<sup>145</sup> See Joie D. Acosta, et al., *Cross-Agency Evaluation of DoD, VA, and HHS Mental Health Public Awareness Campaigns*, RAND Corporation, Santa Monica, CA, 2020, at [https://www.rand.org/pubs/research\\_reports/RR1612.html](https://www.rand.org/pubs/research_reports/RR1612.html); National Academy of Medicine, *Preventing Psychological Disorders in Service Members and their Families*, 2014, at <https://www.nap.edu/catalog/18597/preventing-psychological-disorders-in-service-members-and-their-families-an>; and DOD, VA, and Department of Health and Human Services, *Interagency Task Force on Military and Veterans Mental Health*, 2016 Annual Report, November 2016, at [https://www.mentalhealth.va.gov/docs/ITF\\_2016\\_Annual\\_Report\\_November\\_2016.pdf](https://www.mentalhealth.va.gov/docs/ITF_2016_Annual_Report_November_2016.pdf).

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<b>Sec. 702</b> would amend 10 U.S.C. § 1090a to establish an additional process by which a commanding officer or supervisor confidentially refers a servicemember for a mental health evaluation.	No similar provision	Not adopted
<b>Sec. 750</b> would require the DOD to submit a report to Congress, no later than 180 days after enactment, on the provision of pregnancy-related mental health care.	<b>Sec. 749</b> would require the Comptroller General to submit a report to Congress, no later than one year after enactment, on prenatal and postpartum mental health conditions of servicemembers and their families.	<b>Sec. 754</b> adopts Senate Sec. 749 with an amendment that incorporates the report elements in House Sec. 750.
No similar provision	<b>Sec. 535</b> would require the Judge Advocates General of the Army, Marine Corps, Navy, and Air Force to brief the House and Senate armed services committees on the provision of mental health support for vicarious trauma in certain military justice system personnel.	<b>Sec. 546</b> adopts Senate Sec. 535.
<b>Post-Traumatic Stress Disorder</b>		
<b>Sec. 736</b> would direct the Secretary of Defense to award grants for collaborative research between the United States and Israel on post-traumatic stress disorder (PTSD).	No similar provision	Not adopted The conferees direct the Secretary of Defense to brief the House and Senate armed services committees, within 180 days after enactment, on certain military health research collaboration between the United States and Israel.
<b>Sec. 750D</b> would authorize an increase of \$2.5 million for the Defense Health Program account for PTSD-related healthcare activities.	No similar provision	Not adopted
<b>Substance Abuse</b>		
<b>Sec. 717</b> would require the Secretary of Defense to establish a policy and tracking system that monitors and prohibits over-prescription of opioids in accordance with certain federal clinical practice and prescription guidelines.	No similar provision	<b>Sec. 719</b> adopts House Sec. 717 with an amendment expanding the elements required in the DOD policy to prevent opioid prescription abuse.
<b>Sec. 726</b> would require the Secretary of Defense and Secretary of Veterans Affairs to conduct a study and provide a report to Congress on substance use disorder trends before and after the COVID-19 public health emergency among military and veteran populations.	No similar provision	Not adopted

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<b>Suicide</b>		
<b>Sec. 732</b> would amend Section 741(a)(2) of the FY2020 NDAA (P.L. 116-92) to include additional data elements in DOD’s annual report to Congress on suicide among servicemembers.	No similar provision	<b>Sec. 742</b> adopts House Sec. 732.
<b>Sec. 745</b> would direct the Comptroller General to assess and submit a report to Congress on DOD’s suicide prevention policies, programs, and processes at remote military installations outside of the contiguous United States.	<b>Sec. 747</b> is a similar provision to House Sec. 745.	<b>Sec. 752</b> adopts House Sec. 745.
<b>Mental Health Care for Reservists</b>		
No similar provision	<b>Sec. 746</b> would require the Comptroller General to conduct a study and submit a report to Congress, no later than one year after enactment, on the provision of mental health care to members of the Reserve Component.	<b>Sec. 736</b> adopts Senate Sec. 746 with an amendment that modifies the study to include the provision of mental health care to all servicemembers during the COVID-19 pandemic.
<b>Sec. 752</b> would amend 38 U.S.C. § 1712A to authorize the VA to provide of readjustment counseling and certain outpatient care for military reservists with certain mental health issues.	<b>Sec. 762</b> is a similar provision to House Sec. 752.	<b>Sec. 762</b> adopts House Sec. 752.
<b>Sec. 753</b> would add a new section to Chapter 17, Subchapter VIII, Title 38 of the U.S. Code, authorizing the provision of VA mental health services for military reservists.	<b>Sec. 763</b> is a similar provision to House Sec. 753.	<b>Sec. 763</b> adopts House Sec. 753.
<b>Sec. 754</b> would amend 38 U.S.C. § 1720F to authorize the provision of services offered by VA suicide prevention programs to military reservists.	<b>Sec. 764</b> is a similar provision to House Sec. 754.	<b>Sec. 764</b> adopts House Sec. 754.
<b>Sec. 755</b> would require the VA Secretary to submit a report to Congress, no later than one year after enactment, on certain health care trends resulting from expanded mental health care eligibility to military reservists.	<b>Sec. 765</b> is a similar provision to House Sec. 755.	<b>Sec. 765</b> adopts House Sec. 755.

**Discussion.** The House and Senate bills include provisions to address mental health issues affecting servicemembers, veterans, and family members. There are eight general mental health assessment, funding, and reporting provisions, two substance abuse-related provisions, three suicide-related provisions, and nine reserve component-related provisions.

**General Mental Health.** Section 701 of the House bill would have amended 10 U.S.C. §1074m to require mental health assessments for servicemembers participating in certain warfighting activities that had a “direct and immediate impact on a combat operation or other military operation,” but were not necessarily deployed in support of a contingency operation. House Section 702 would have amended 10 U.S.C. §1090a by establishing a new process that triggers a command-directed mental health evaluation. The new process would have allowed a servicemember to disclose a certain phrase, which then initiates an automatic, confidential referral for an evaluation. The FY2021 NDAA adopts neither House Section 701 nor 702.

Both the House and Senate bills include a provision on pregnancy-related mental health. House Section 750 would have required DOD to submit a report to Congress, no later than 180 days after enactment, on the availability of certain mental health services for pre-natal and post-partum depression and mood disorders, mental health utilization, access barriers, and options to address such barriers. Senate Section 749 requires the Comptroller General to conduct a study and submit a report to Congress, no later than one year after enactment, on pre-natal and post-partum depression, anxiety, obsessive-compulsive disorder, psychosis, and other relevant mood disorders among TRICARE beneficiaries. The study would include a demographic assessment of the population, a comparison of trends between TRICARE beneficiaries and the general U.S. population, the availability of mental health care services, and the effects of certain biases in the provision of such care. Section 754 of the FY2021 NDAA adopts Senate Section 749 with an amendment that incorporates the report elements specified in House Section 750.

Section 535 of the Senate bill requires the Judge Advocates General of the military services to brief the House and Senate armed services committees, no later than 180 days after enactment, on the provision of mental health support for *vicarious trauma* to certain military justice system personnel (i.e., trial, defense, and special victims’ counsel, and military investigative staff).<sup>146</sup> The briefing is to include an overview of mental health services available, screening tools, an assessment of mechanisms to eliminate or reduce mental health stigma, and other related elements. Section 546 of the FY2021 NDAA adopts this provision.

**Post-Traumatic Stress Disorder.** The House bill included two provisions covering PTSD-focused programming. Section 736 of the House bill would have established a new DOD grant program, in coordination with the Secretary of Veterans Affairs and the Secretary of State, focusing on PTSD collaborative research between the United States and Israel. The grant program would have been administered in accordance with the 1972 agreement on the United States-Israel Binational Science Foundation and would have been terminated seven years after the first award was issued.<sup>147</sup> A report to Congress would have been required 180 days after the completion of any project funded by the grant program. The FY2021 NDAA does not adopt this provision. However, the conferees direct DOD to brief the House and Senate armed services committees on current military medical research collaboration between the United States and Israel.<sup>148</sup> The briefing is to include a description of research on trauma care, infectious disease surveillance and treatment, PTSD, and traumatic brain injury.

House Section 750D would have authorized a \$2.5 million increase in Defense Health Program funding for PTSD-related care or research activities. The increase in funding would have been

<sup>146</sup> *Vicarious trauma* (VT) is the “cognitive, emotional, social, and behavioral changes that may occur while working with traumatized individuals.” For more on VT, see VA, “PTSD: National Center for PTSD,” accessed September 2, 2020, at <https://www.ptsd.va.gov/professional/treat/care/toolkits/provider/workingWithTraumaSurvivors.asp>; and

<sup>147</sup> For more on the United States-Israel Binational Science Foundation (BSF) and other cooperative agreements with Israel, see CRS Report RL33222, *U.S. Foreign Aid to Israel*, by Jeremy M. Sharp; and U.S.-Israel Binational Science Foundation, “About the BSF,” accessed September 2, 2020, at <https://www.bsf.org.il/about/>.

<sup>148</sup> See p. 1674 of H.Rept. 116-617.

offset from the Defense-Wide Operation and Maintenance account. The FY2021 NDAA does not adopt this provision.

**Substance Abuse.** Section 717 of the House bill requires the Secretary of Defense to establish a policy that prohibits the over-prescription of opioids through mandatory use of clinical practice and prescription guidelines issued by the U.S. Centers for Disease Control and Prevention and the Food and Drug Administration. The provision also requires the Secretary of Defense to establish a tracking system to monitor compliance with such guidelines and other opioid prescribing controls. Section 719 of the FY2021 NDAA adopts this provision with an amendment that expands the required elements included in DOD’s policy to prevent opioid prescription abuse.

Section 726 of the House bill would have directed the Secretary of Defense and Secretary of Veterans Affairs to conduct a study on substance use or abuse trends among servicemembers and veterans during the COVID-19 pandemic. The study would have included analyses of opioid or illicit substance overdoses and deaths; alcohol use disorders; suicides; information resources disseminated by DOD, VA, SAMHSA and the National Institutes of Health; health care utilization; and an identification of substance abuse improvement areas for future pandemic response scenarios. The provision also would have required two reports to Congress that include: (1) a description and status update of the study, no later than 120 days after the COVID-19 public health emergency ends; and (2) the results of the study, no later than two years after the COVID-19 public health emergency ends.<sup>149</sup> The FY2021 NDAA does not adopt this provision.

**Suicide.** Section 732 of the House bill amends Section 741(a)(2) of the FY2020 NDAA (P.L. 116-92) by adding new data elements to the annual DOD report to Congress on suicide among servicemembers. The new elements include: (1) the number of suicides, attempted suicides, and cases of suicidal ideation during the year after a deployment in support of a contingency operation; and (2) the number of suicides in which a servicemember was prescribed a medication for mental health issue during the year before his/her death. Section 742 of the FY2021 NDAA adopts this provision.

Section 745 of the House bill and Section 747 of the Senate bill are identical provisions that require the Comptroller General to review DOD’s suicide prevention efforts for servicemembers assigned to certain remote military installations located outside of the contiguous United States. The review elements include: relevant DOD policies, suicide prevention programs administered on military installations, mental health screenings, procedures for responding to an attempted or completed suicide, data collection standards, availability of suicide prevention information (including information from indigenous populations and graduate research programs), and other relevant items. Preliminary results of the review are to be briefed to the HASC and SASC no later than October 1, 2021, with a final report due to Congress no later than March 1, 2022. Section 752 of the FY2021 NDAA adopts the House provision.

**Mental Health Care for Military Reservists.** Section 746 of the Senate bill directs the Comptroller General to conduct a study and submit a report to Congress, no later than one year after enactment, on all federal, state, and private mental health programs that offer services to members of the Reserve Components (i.e. federal reserves and National Guard). The study is to describe gaps and barriers to accessing such programs, DOD mental health screening requirements, and recommendations to “strengthen the reintegration” of reservists. Section 736 of

<sup>149</sup> The *COVID-19 public health emergency* refers to the public health emergency declaration issued by the Secretary of Health and Human Services on January 27, 2020. For more on the declaration, see <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>.

the FY2021 NDAA adopts this provision with an amendment that modifies the study to include the provision of mental health care to all servicemembers during the COVID-19 pandemic.

Both the House and Senate bills include provisions organized under the Care and Readiness Enhancement for Reservists Act of 2020, which was incorporated as a separate subtitle within the House-passed and Senate-passed NDAs for FY2021.<sup>150</sup> House Section 752 and Senate Section 762 are identical provisions to amend 38 U.S.C. §1712A to authorize VA readjustment counseling services for military reservists with mental health issues.<sup>151</sup> Section 762 of the FY2021 NDAA adopts the House provision.

House Section 753 and Senate Section 763 are identical provisions to amend Chapter 17, Subchapter VIII of Title 38, U.S. Code, to authorize further VA mental health services for military reservists, including outpatient or inpatient care at VA health care facilities.<sup>152</sup> Section 763 of the FY2021 NDAA adopts the House provision.

House Section 754 and Senate Section 764 are identical provisions to amend 38 U.S.C. §1720F to make military reservists eligible for VA suicide prevention services.<sup>153</sup> Section 764 of the FY2021 NDAA adopts the House provision.

House Section 755 and Senate Section 765 are identical provisions that direct the Secretary of Veterans Affairs to submit a report to Congress, no later than one year after enactment, assessing any changes in VA mental health services utilization by military reservists and any challenges to providing such services. Section 765 of the FY2021 NDAA adopts the House provision.

**References:** See CRS In Focus IF10951, *Substance Abuse Prevention, Treatment, and Research Efforts in the Military*, by Bryce H. P. Mendez; CRS Insight IN11164, *Suicide Rates and Risk Factors for the National Guard*, by Kristy N. Kamarck, Bryce H. P. Mendez, and Xavier L. Arriaga; and CRS In Focus IF10876, *Military Suicide Prevention and Response*, by Kristy N. Kamarck.

**CRS Point of Contact:** Bryce H. P. Mendez.

## Environmental and Occupational Health Concerns

**Background:** DOD policies require protection from occupational illness or accidental death and injury.<sup>154</sup> DOD’s occupational and environmental health programs typically require military and

<sup>150</sup> The Care and Readiness Enhancement (CARE) for Reservists Act of 2020 was incorporated into the House version of the FY2021 NDAA through the House Armed Services Committee mark-up process. The CARE for Reservists Act of 2020 was incorporated in the Senate version of the FY2021 NDAA by S.Amdt. 1968.

<sup>151</sup> Readjustment counseling is a range of psychosocial services designed to support individuals through a “successful transition from military to civilian life,” and is typically offered at VA Vet Centers. For more on Vet Centers and readjustment counseling, see CRS In Focus IF11378, *Veterans Health Administration: Behavioral Health Services*, by Victoria R. Green; and Department of Veterans Affairs (VA), “Vet Centers (Readjustment Counseling),” accessed September 2, 2020, at [https://www.vetcenter.va.gov/Vet\\_Center\\_Services.asp](https://www.vetcenter.va.gov/Vet_Center_Services.asp).

<sup>152</sup> For more on VA mental health services, see *Ibid.*; and VA, “Mental Health,” accessed September 2, 2020, at <https://www.mentalhealth.va.gov/index.asp>.

<sup>153</sup> For more on VA suicide prevention services, see [https://www.mentalhealth.va.gov/suicide\\_prevention/](https://www.mentalhealth.va.gov/suicide_prevention/).

<sup>154</sup> See DOD Instruction 6055.01, *DoD Safety and Occupational Health (SOH) Program*, updated July 14, 2020, at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/605501p.pdf?ver=2018-11-19-110543-180>; DOD Instruction 6055.05, *Occupational and Environmental Health (OEH)*, updated August 31, 2018, at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/605505p.pdf?ver=2019-04-04-095234-197>; DOD Directive 6200.04, *Force Health Protection*, updated April 23, 2007, at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/620004p.pdf>; DOD Instruction 6055.12, *Hearing*

civilian personnel to receive exposure or injury prevention education for specific tasks or occupations. Exposure assessment, operational risk management, personal protective equipment, and medical prophylactics or treatment training may also be required.<sup>155</sup>

DOD policies also require exposure assessments and screenings for certain hazardous substances or potentially harmful environments, such as lead, hexavalent chromium, cadmium, open air burn pits, radiation, blast pressure injuries, and noise.<sup>156</sup> DOD primarily documents exposures in the Defense Occupational and Environmental Health Readiness System (DOEHRS), an electronic “information management system for longitudinal exposure recordkeeping and reporting.”<sup>157</sup> DOD epidemiologists, public health practitioners, and occupational safety experts use DOEHRS data to conduct medical surveillance, inform future prevention measures, and develop improved personnel protective equipment. DOD medical personnel can use DOEHRS data when evaluating, diagnosing, or treating patients exposed to a hazardous substance or environment. In addition to DOEHRS, DOD can also document certain exposures in legacy electronic health record systems, paper medical records, or the individual longitudinal exposure record (ILER).<sup>158</sup> The VA also uses DOD’s exposure data when considering service connection for a veteran’s claim for disability compensation, or providing ongoing medical care.<sup>159</sup>

While DOD’s occupational and environmental health programs screen, document, and track servicemember or civilian employee exposure to certain substances, all potentially hazardous substances or occupational exposures are not covered under these programs.

**Environmental and Occupational Health Concerns Sectional Analysis**

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<b>General Exposure Tracking and Documentation</b>		
No similar provision	<p><b>Sec. 753</b> would require the Secretary of Veterans Affairs to provide veterans read-only access to their information archived in the Individual Longitudinal Exposure Record.</p>	<p><b>Sec. 9105</b> adopts Senate Sec. 753 with an amendment to remove the requirement for Secretary of Veterans Affairs to consult with DOD.</p>

*Conservation Program (HCP)*, August 14, 2019, at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/605512p.pdf?ver=2019-08-14-073309-537>; and DOD Instruction 6055.20, *Assessment of Significant Long-Term Health Risks From Past Environmental Exposures On Military Installations*, updated June 10, 2019, at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/605520p.pdf?ver=2019-06-10-110814-890>.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid.

<sup>157</sup> DOD Instruction 6055.05, *Occupational and Environmental Health (OEH)*, updated August 31, 2018, p. 17, at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/605505p.pdf?ver=2019-04-04-095234-197>. For more on DOEHRS, see <https://www.health.mil/Military-Health-Topics/Technology/Clinical-Support/Centralized-Credentials-Quality-Assurance-System/Decision-Support/Defense-Occupational-and-Environmental-Health-Readiness-System-Industrial-Hygiene>.

<sup>158</sup> The *individual longitudinal exposure record (ILER)* is a web-based application that displays consolidated occupational and environmental exposure data for servicemembers and veterans. When fully implemented, the ILER is intended to be a “complete record of a service member’s Occupational and Environmental Health (OEH). The ILER is also intended to provide DOD and VA clinicians, claims adjudicators, and benefits advisors a single point of access to exposure-related records. For more on ILER, see <https://health.mil/Reference-Center/Fact-Sheets/2020/06/23/ILER>.

<sup>159</sup> For more on presumptive service connection and veterans disability compensation, see VA, “Disability Compensation,” Fact Sheet, February 2015, at [https://www.va.gov/TRIBALGOVERNMENT/docs/Presumption\\_Fact\\_Sheet.pdf](https://www.va.gov/TRIBALGOVERNMENT/docs/Presumption_Fact_Sheet.pdf); and CRS Report R44837, *Benefits for Service-Disabled Veterans*, coordinated by Heather M. Salazar.

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<p><b>Sec. 1046</b> would require the Defense Health Agency to develop a tracking system of servicemember injuries incurred in/during the use of newest generation personal protective equipment, and to assess for such injuries during the annual periodic health assessment.</p>	<p><b>Sec. 1082</b> is a similar provision to House Sec. 1046 that also requires an assessment of servicemembers during any post-deployment health assessment, for injuries in connection with ill-fitting or malfunctioning personal protective equipment.</p>	<p><b>Sec. 1091</b> adopts Senate Sec. 1082.</p>
<b>Burn Pit and Airborne Hazards Exposure</b>		
<p><b>Sec. 724</b> would require the Secretary of Veterans Affairs to assess servicemembers or veterans who have tested positive for certain viral infections for previous (potential) exposure to “toxic airborne chemicals or other airborne contaminants” during military service and enroll such individuals in the Airborne Hazards and Open Burn Pit Registry.</p>	<p>No similar provision</p>	<p><b>Sec. 735</b> adopts House Sec. 724 with an amendment requiring Secretary of Veterans Affairs to evaluate, prior to conducting an initial health assessment, whether a veteran had been stationed at a location where open burn pits were used or was exposed to toxic airborne chemicals or contaminants.</p>
<p><b>Sec. 757</b> would require the Secretary of Defense to submit a report to Congress on the status of all research efforts relating to the health effects of burn pit exposure.</p>	<p>No similar provision</p>	<p>Not adopted The conference committee directs DOD to brief the House and Senate armed services committees, within 180 days after enactment, on (1) research and study efforts relating to the health effects of burn pits, and (2) a description of the training provided to DOD medical providers on the potential adverse health effects of burn pits.</p>
<p><b>Sec. 758</b> would require DOD medical providers to receive training on the potential health effects of burn pit exposure.</p>	<p>No similar provision</p>	<p>Not adopted</p>
<p><b>Sec. 759</b> would require the Secretary of Defense to include a question in the post-deployment health assessment regarding servicemember exposure to burn pits.</p>	<p>No similar provision</p>	<p><b>Sec. 721</b> adopts House Sec. 759.</p>
<p><b>Sec. 760</b> would amend Section 201(c)(2) of the Dignified Burial and Other Veterans’ Benefits Improvement Act of 2012 (P.L. 112-260) by adding Egypt and Syria as additional locations where servicemembers or veterans may have been exposed to burn pits and therefore may be enrolled in the open burn pit registry.</p>	<p>No similar provision</p>	<p>Not adopted</p>
<b>Per- and Polyfluoroalkyl Substances Exposure</b>		

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<b>Sec. 703</b> would require the Secretary of Defense to screen and test servicemembers during certain assessments for exposure to Per- and Polyfluoroalkyl substances (PFAS).	No similar provision	Not adopted
<b>Sec. 339</b> would authorize a funding increase of \$5 million for a study on PFAS contamination in drinking water directed in Section 316 of the FY2018 NDAA (P.L. 115-91).	<b>Sec. 322</b> is a similar provision to House Sec. 339.	<b>Sec. 337</b> adopts House Sec. 339.
<b>Other Exposures</b>		
<b>Sec. 742</b> would require the Secretary of Defense to conduct a study and submit a report to Congress, no later than 180 days after enactment, on toxin exposure of servicemembers who deployed to Karshi-Khanabad Air Base, Uzbekistan, between October 1, 2001, and December 31, 2005.	No similar provision	<b>Sec. 751</b> adopts House Sec. 742.
<b>Sec. 743</b> would require the DOD Inspector General to audit, within 90 days after enactment, the medical conditions of certain individuals and their association with potential adverse exposures in privatized military housing.	<b>Sec. 748</b> is a similar provision to House Sec. 743.	<b>Sec. 748</b> adopts Senate Sec. 748 with an amendment to also require the DOD Inspector General to audit the military health hazard identification process established in Section 3053 of the FY2020 NDAA (P.L. 116-92).
No similar provision	<b>Sec. 754</b> would require the Secretary of Defense, in consultation with the National Institutes of Health, to study and submit a report to Congress on the incidence of cancer among military aviators and aviation support personnel.	<b>Sec. 750</b> adopts Senate Sec. 754.
No similar provision	<b>Sec. 1090B</b> would amend 38 U.S.C. § 1116(a)(2) by adding Parkinsonism, Bladder Cancer, and Hypothyroidism to the list of diseases associated with certain exposure to herbicide agents with presumptive service connection for veterans who served in the Republic of Vietnam.	<b>Sec. 9109</b> adopts Senate Sec. 1090B.

**Discussion.** The House and Senate bills include provisions to address DOD’s requirements and processes for documenting and collecting information from medical surveillance on certain at-risk individuals or those exposed to certain occupational or environmental hazards.

**General Exposure Tracking and Documentation.** Section 753 of the Senate bill requires the Secretary of Veterans Affairs, in consultation with the Secretary of Defense, to provide veterans access to ILER documentation in a read-only format. Section 9105 of the FY2021 NDAA adopts this provision.

Section 1046 of the House bill would have required the Service Secretaries to submit a report to Congress, no later than January 31, 2021, detailing their respective developments and fielding of “newest generations of personal protective equipment [PPE].” The provision would have also required DOD to:

- maintain a data system to document injuries associated with the use of such PPE, which could include the use of DOEHRs;
- submit a report to Congress, no later than January 31, 2025, on the prevalence of preventable injuries resulting from ill-fitting or malfunctioning PPE; and
- include at least one question on the annual periodic health assessment (PHA) relating to servicemember injuries resulting from ill-fitting or malfunctioning PPE.<sup>160</sup>

Section 1082 of the Senate bill is a similar provision that requires DOD to brief the House and Senate armed services committees, instead of providing a report, on the prevalence of preventable injuries resulting from ill-fitting or malfunctioning PPE. The Senate bill also requires DOD to include at least one question in the post-deployment health assessment relating to servicemember injuries resulting from ill-fitting or malfunctioning PPE. Section 1091 of the FY2021 NDAA adopts Senate Section 1082.

***Burn Pit and Airborne Hazards Exposure.*** DOD defines an open-air burn pit as “an area that is designated for disposing of solid waste by burning in the outdoor air at a contingency.”<sup>161</sup> Use of burn pits is a DOD waste disposal practice used during military contingency operations in certain overseas military locations (e.g., Iraq and Afghanistan). Congress has enacted numerous provisions to reduce the use of open-air burn pits and study the health effects of burn pit exposure among servicemembers and veterans.<sup>162</sup>

The House bill includes five provisions related to burn pit and airborne hazards exposure; the Senate bill includes one related provision (see discussion on Senate Section 754 below). Section 724 of the House bill requires the Secretary of Defense and Secretary of Veterans Affairs to evaluate servicemembers and veterans who have tested positive for a federally declared pandemic virus (e.g., SARS-CoV-2) for previous exposure to an open-air burn pit or airborne hazards. Based on this evaluation, the provision requires DOD or VA to enroll the individual in the Airborne Hazards and Open Burn Pit Registry.<sup>163</sup> The provision also requires the Secretary of Veterans Affairs to conduct a study on the health impacts from certain pandemic viruses on servicemembers and veterans exposed to open-air burn pits and airborne hazards. Section 735 of the FY2021 NDAA adopts this provision with an amendment that requires the Secretary of Veterans Affairs to evaluate, prior to conducting an initial health assessment, whether a veteran

<sup>160</sup> A *periodic health assessment* (PHA) is an annual screening of “overall health and medical readiness status of each Service member.” For more on the PHA, see DOD Instruction, *Individual Medical Readiness (IMR)*, updated May 12, 2020, p. 9, at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/602519p.pdf?ver=2020-05-12-110321-523>.

<sup>161</sup> DOD Instruction 4515.19, *Use of Open-Air Burn Pits in Contingency Operations*, p. 14, at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/471519p.pdf?ver=2018-11-14-103736-647>.

<sup>162</sup> See CRS Congressional Distribution Memorandum, *Disposal of Wastes in Open Burn Pits During U.S. Military Contingency Operations in Iraq and Afghanistan*, by David M. Bearden, Don J. Jansen, Sidath V. Panangala, and Jerry H. Yen. This CRS memorandum is available upon request.

<sup>163</sup> The Department of Veterans Affairs administers the Airborne Hazards and Open Burn Pit Registry to allow eligible servicemembers and veterans to document their exposures and report health concerns through an online survey. For more on the Registry, see <https://www.publichealth.va.gov/exposures/burnpits/registry.asp>.

had been stationed at a location where open burn pits were used or was exposed to toxic airborne chemicals or contaminants.

Section 757 of the House version would have required the Secretary of Defense to submit a report to the House and Senate armed services committees on the status of all current research projects studying the health effects of burn pits. Section 758 of the House version would have required the DOD health care providers to receive training on the potential health effects of burn pits. The FY2021 NDAA does not adopt House Sections 757 or 758. However, the conferees direct DOD to brief the House and Senate armed services committees, within 180 days after enactment, on (1) research and study efforts relating to the health effects of burn pits, and (2) a description of the training provided to DOD medical providers on the potential adverse health effects of burn pits.<sup>164</sup>

Section 759 of the House version directs DOD to include an “independent and conspicuous question” regarding a servicemember’s exposure to open-air burn pits in the post-deployment health assessment. Section 721 of the FY2021 NDAA adopts this provision. Section 760 of the House version would have added Egypt and Syria to the list of locations in which exposure to open-air burn pits would deem a servicemember eligible for the Airborne Hazards and Open Burn Pit Registry. The FY2021 NDAA does not adopt this provision.

***Per- and Polyfluoroalkyl Substances (PFAS) Exposure.*** PFAS refers to a large group of synthesized chemical compounds used in a variety of commercial, industrial, and military settings. Examples of PFAS use include food packaging, nonstick coatings for certain cookware, stain-resistant fabrics, and certain types of fire-fighting foam.<sup>165</sup> Various federal departments and agencies have initiated studies, including one directed by the FY2018 NDAA, to evaluate potential health effects associated with exposures to PFAS-contaminated water sources.<sup>166</sup> As Congress considered concerns of certain populations (i.e., firefighters) that may be at-risk for increased exposure to PFAS, the FY2020 NDAA established an annual blood-testing requirement to determine and document potential exposure to PFAS among DOD firefighters.<sup>167</sup>

Section 703 of the House bill would have required the Secretary of Defense to screen servicemembers and document potential PFAS exposure during the annual PHA, pre/post-deployment health assessments, and the servicemember’s separation health and physical examination.<sup>168</sup> Servicemembers with a potential PFAS exposure would have been entitled to follow-on blood testing and further documentation of their health status in the DOD health record. The FY2021 NDAA does not adopt this provision.

<sup>164</sup> See p. 1680 of H.Rept. 116-617.

<sup>165</sup> For more on PFAS, see CRS Report R45986, *Federal Role in Responding to Potential Risks of Per- and Polyfluoroalkyl Substances (PFAS)*, coordinated by David M. Bearden.

<sup>166</sup> Ibid and P.L. 115-91 §316. For more on the PFAS study directed by the FY2018 NDAA, see <https://www.atsdr.cdc.gov/news/displaynews.asp?PRid=2664>.

<sup>167</sup> P.L. 116-92 §707. The annual blood-testing requirement was to have taken effect on October 1, 2020.

<sup>168</sup> A *separation health and physical examination* (SHPE) is an assessment of medical history, service-related medical concerns, and current health status that is conducted when a servicemember transitions from military service. The SHPE is also used concurrently as a VA disability examination. For more on the SHPE, see DOD Instruction 6040.46, *The Separation History and Physical Examination (SHPE) for the DoD Separation Health Assessment (SHA) Program*, April 14, 2016, at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/604046p.pdf>. Deployment health assessments are health screenings that occur before, during, and after deployment to “monitor, assess, and prevent disease and injury” and document and reduce occupational and environmental risks and exposures. For more on deployment health assessments, see DOD Instruction 6490.03, *Deployment Health*, June 19, 2019, at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/649003p.pdf?ver=2019-06-19-134540-850>.

Section 339 of the House bill and Section 322 of the Senate bill authorizes a \$5 million increase for the PFAS study directed by the FY2018 NDAA. Section 337 of the FY2021 NDAA adopts House Section 339.

**Other Exposures.** Section 742 of the House bill requires DOD to conduct a study and submit a report to Congress, no later than 180 days after enactment, on servicemember exposures to toxic substances at the Karshi-Khanabad Air Base (also referred to as “K2”), Uzbekistan, during October 1, 2001, to December 31, 2005. Section 751 of the FY2021 NDAA adopts this provision.

Section 743 of the House bill and Section 748 of the Senate bill are similar provisions that direct the DOD Inspector General to audit, no later than 90 days after enactment, the association of medical conditions of servicemembers or their families with adverse exposures to “unsafe or unhealthy” military housing units.<sup>169</sup> The provisions require DOD to submit a report to the House and Senate armed services committees on their audit results, no later than one year after the audit begins. Section 748 of the FY2021 NDAA adopts Senate section 748 with an amendment also requiring the DOD Inspector General to audit the military housing health hazard identification process established in section 3053 of the FY2020 NDAA (P.L. 116-92).

Section 754 of the Senate bill directs DOD, in conjunction with the National Institutes of Health (including the National Cancer Institute), to conduct a study of cancer incidence among the military aviation community (i.e., aviators and aviation support personnel). The provision requires DOD to conduct a study to determine, and submit a report to Congress, no later than one year after enactment, with a determination as to whether cancer incidence is higher for the military aviation community than the general population (age-adjusted). If DOD determines that the military aviation community has a higher cancer incidence, a second report to Congress is required, no later than one year after the first report was submitted, describing the environmental and occupational risks of the community, community and occupational demographics, and other elements relating to cancer risks. Section 750 of the FY2021 NDAA adopts this provision.

Section 1090B of the Senate bill amends 38 U.S.C. §1116(a)(2) by adding parkinsonism, bladder cancer, and hypothyroidism to the list of conditions with presumptive service-connection, for certain veterans potentially exposed to certain herbicide agents (e.g., Agent Orange) in Vietnam and being considered for disability compensation and other veterans benefits.<sup>170</sup> Section 9109 of the FY2021 NDAA adopts this provision.

**References:** See CRS Report R46107, *FY2020 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Bryce H. P. Mendez; CRS Report R45986, *Federal Role in Responding to Potential Risks of Per- and Polyfluoroalkyl Substances (PFAS)*, coordinated by David M. Bearden; and CRS In Focus IF11368, *Expansion of Benefits to Blue Water Navy Vietnam Veterans*, by Heather M. Salazar.

**CRS Point of Contact:** Bryce H. P. Mendez.

## COVID-19 Healthcare and Public Health Provisions

**Background.** As DOD continues to conduct support operations for the federal government response to COVID-19, as it has done so throughout 2020, concerns have arisen over its capacity

<sup>169</sup> For more on military housing, see CRS Report WPD00024, *The Basics of Military Housing*, by G. James Herrera and Patrick A. Garvey.

<sup>170</sup> For more on disability compensation, see footnote **Error! Bookmark not defined.** For more on veterans’ exposure to Agent Orange, see CRS In Focus IF11368, *Expansion of Benefits to Blue Water Navy Vietnam Veterans*, by Heather M. Salazar and CRS Report R43790, *Veterans Exposed to Agent Orange: Legislative History, Litigation, and Current Issues*, by Sidath Viranga Panangala and Daniel T. Shedd.

to support a public health crisis such as global pandemic and to provide healthcare to those servicemembers responding to the crisis. These concerns and other matters are more visible in the House-passed bill’s various health-related COVID-19 provisions.

**COVID-19 Healthcare and Public Health Provisions Sectional Analysis**

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<b>Sec. 721</b> would require the Secretary of Defense to establish a “COVID-19 Military Health Systems Review Panel” to review the response of the military health system to COVID-19.	No similar provision	<b>Sec. 731</b> adopts House Sec. 721.
<b>Sec. 722</b> would require the Secretary of Defense to develop a strategy for pandemic preparedness and response, as well as conduct a study on the response of the Military Health System to COVID-19, to be submitted by June 1, 2021.	No similar provision	<b>Sec. 732</b> adopts House Sec. 722, with an amendment to remove the requirement for the DOD Inspector General to report on fraud, waste, and abuse of any COVID-19 funds.
<b>Sec. 723</b> would require the Secretary of Defense to establish and maintain a registry of TRICARE beneficiaries who have been diagnosed with COVID-19. This section would also require the Secretary to submit to the Committees on Armed Services a report on establishing the registry.	No similar provision	<b>Sec. 734</b> adopts House Sec. 723, with an amendment to require DOD to establish the registry by June 1, 2021, and include only beneficiaries diagnosed with, or treated for COVID-19 at an MTF.
<b>Sec. 725</b> would require DOD to make general distribution COVID-19 pandemic materials available in languages other than English.	No similar provision	Not adopted
<b>Sec. 520A</b> would extend health care eligibility for the Transitional Assistance Management Program to certain National Guard members separating from active service in support of the COVID-19 pandemic.	<b>Sec. 705</b> is a similar provision to House Sec. 520A.	<b>Sec. 733</b> adopts House Sec. 520A and Senate Sec. 705.

**Discussion.** The selected provisions discussed below relate to COVID-19 specific Defense Health Care and Public Health issues and programs. Selected provisions related to COVID-19 specific military personnel issues and programs are discussed separately.

Section 721 of the House bill requires the Secretary of Defense to establish a “COVID-19 Military Health System Review Panel” to review the MHS response to the COVID-19 pandemic, examine its effects on DOD’s health programs, and develop recommendations for administrative or congressional consideration. The panel is to be chaired by the Uniformed Services University of the Health Sciences (USUHS) President and would be composed of various MHS senior leaders.<sup>171</sup> The panel is required to submit a report to Congress on its findings, no later than June

<sup>171</sup> *MHS senior leaders* include those comprising the Senior Military Medical Action Council (SMMAC). For more on the SMMAC, see p. 3 of CRS Report R45399, *Military Medical Care: Frequently Asked Questions*, by Bryce H. P. Mendez.

1, 2021, at which time the panel is to terminate. Section 731 of the FY2021 NDAA adopts this provision.

House Section 722 directs the Secretary of Defense to develop a pandemic preparedness and response strategy. The strategy is to identify and discuss the following elements in preparation for a pandemic response:

- necessary training, readiness activities, equipment requirements, and logistics functions;
- DOD health surveillance capabilities, including infectious disease prevention efforts and investments in overseas public health laboratories; and
- infectious disease prevention efforts in the domestic setting, including DOD’s role with the National Disaster Medical System (NDMS) and other federal public health capabilities.

The provision also requires DOD to study the MHS response to the COVID-19 pandemic. DOD would have been directed to submit two reports to Congress; (1) a report to Congress, no later than June 1, 2021, that includes its pandemic response strategy, study findings, and relevant recommendations; and (2) a DOD Inspector General (DODIG) assessment of any waste, fraud, and abuse discovered under invocation of the Defense Production Act during the COVID-19 pandemic.<sup>172</sup> Section 732 of the FY2021 NDAA adopts this provision with an amendment that removes the requirement for a DODIG assessment.

House Section 723 would have directed the Secretary of Defense to establish a registry of TRICARE beneficiaries diagnosed with COVID-19. The registry would have included demographic data of the affected population, symptoms experienced and treatments received, certain past medical history data, and any relevant inputs from the Airborne Hazards and Open Burn Pit Registry.<sup>173</sup> The provision would also have required DOD to submit a report to Congress, no later than 180 days after enactment, that discusses their implementation plan, costs, administrative details to maintaining the registry, and recommended legislative changes that may be necessary. Section 734 of the FY2021 NDAA adopts this provision with an amendment to require DOD to establish the registry by June 1, 2021, and include only those beneficiaries diagnosed with, or being treated for COVID-19 at an MTF.

House Section 725 would have required DOD to translate and make available any general distribution DOD materials on COVID-19 in the following languages: Arabic, Cambodian, Chinese, French, Greek, Haitian Creole, Hindi, Italian, Japanese, Korean, Laotian, Polish, Portuguese, Russian, Spanish, Tagalog, Thai, Urdu, and Vietnamese. The FY2021 NDAA does not adopt this provision.

Section 520A of the House bill and Section 705 of the Senate bill requires DOD to extend eligibility for the Transitional Assistance Management Program (TAMP) to National Guard members transitioning from full-time, state active duty orders in support of the COVID-19 pandemic.<sup>174</sup> Section 733 of the FY2021 NDAA adopts both provisions.

<sup>172</sup> For more on the *Defense Production Act*, see CRS Insight IN11231, *The Defense Production Act (DPA) and COVID-19: Key Authorities and Policy Considerations*, by Michael H. Cecire and Heidi M. Peters.

<sup>173</sup> For more on the *Airborne Hazards and Open Burn Pit Registry*, see discussion on “Burn Pit and Airborne Hazards” in “Environmental and Occupational Health Concerns.”

<sup>174</sup> The *Transitional Assistance Management Program* (TAMP) provides 180 days of premium-free coverage for TRICARE Prime or TRICARE Select after the sponsors transition or separation. Beneficiaries are eligible for TAMP if their sponsor is subject to certain transitional events, such as involuntary separation under honorable conditions,

**References:** See CRS Report R46481, *COVID-19 Testing: Frequently Asked Questions*, coordinated by Amanda K. Sarata and Elayne J. Heisler; and CRS Report R46316, *Health Care Provisions in the Families First Coronavirus Response Act, P.L. 116-127*, coordinated by Sarah A. Lister and Paulette C. Morgan.

**CRS Points of Contact:** Hibbah Kaileh and Bryce H. P. Mendez.

## Defense Activities and Installations

Other military activities over which the HASC and SASC have jurisdiction include the many DOD-operated retail stores for food, personal goods, and household items—exchanges and commissaries—which servicemembers generally consider among the most significant benefits after healthcare and retirement.<sup>175</sup> Both committees also oversee all aspects of installations, reservations, and other establishments in DOD and the Military Departments. The FY2021 NDAA includes several provisions that directly impact the various DOD retail activities and provisions that address historical designations of military installations.

### Defense Exchange and Commissary Stores

**Background.** Over the past several years, Congress has addressed reforming the Defense Commissary Agency (DeCA) system, requiring several reports and studies that examined consolidating the three military exchanges (Army & Air Force Exchange Service (AAFES), the Marine Corps Exchange (MCX), the Navy Exchange Service Command (NEXCOM)) with the commissary agency. Recent reform proposals have sought to reduce DeCA's reliance on appropriated funds without compromising patrons' commissary benefits and to avoid reducing the revenue generated by DOD's military exchanges. The DOD's military exchanges are non-appropriated fund (NAF) entities whose revenues also fund morale, welfare, and recreation (MWR) facilities on military installations. However, 10 U.S.C. §2482 prohibits the Defense Department from undertaking consolidation without new legislation. Section 633 of the FY2020 NDAA (P.L. 116-92) required the Government Accountability Office (GAO) to review DOD's business case analysis (pricing, sales, measuring customer savings, timetable for consolidation, etc.) before merging the various resale entities into a single entity. On April 30, 2020, GAO released its report and made four recommendations.<sup>176</sup> Among these was that DOD reassess its cost-savings estimates and provide more information on the military services' reactions to the business case analysis, both of which GAO analysts said were omitted from the Pentagon's report to Congress.<sup>177</sup> In FY2020, Congress authorized \$1.0 billion for DeCA to operate 236

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demobilizing member of the Reserve Component, sole survivorship discharge, or transition from the Active Component to the Reserve Component. For more information about TAMP, see <https://tricare.mil/tamp>. For more on the use of *state active duty orders* authorized under 32 U.S.C. §502(f) during the COVID-19 pandemic, see CRS In Focus IF11483, *The National Guard and the COVID-19 Pandemic Response*, by Alan Ott.

<sup>175</sup> U.S. Senate, *Document 113-18, Standing Rules of the Senate*, January 24, 2013, p. 20; U.S. House of Representatives, *Rules of the House of Representatives*, January 11, 2019, p. 6; RCP 116-25, *Rules Adopted by the Committees of the House of Representatives of the United States, 116th Congress, 2019-2020*, p. 37.

<sup>176</sup> GAO, *Commissaries and Exchanges: DOD and Congress Need More Reliable Information on Expected Savings and Costs of Consolidating the Defense Resale Organizations*, GAO-20-418: April 30, 2020, Recommendations at [https://www.gao.gov/products/GAO-20-418?mobile\\_opt\\_out=1#summary\\_recommend](https://www.gao.gov/products/GAO-20-418?mobile_opt_out=1#summary_recommend).

<sup>177</sup> GAO-20-418, p. 17; and Patricia Kime "DoD Miscalculated Savings of Proposed Commissary-Exchange Merger, Watchdog Says," *Military.com*, May 4, 2020, at <https://www.military.com/daily-news/2020/05/04/dod-miscalculated-savings-proposed-commissary-exchange-merger-watchdog-says.html>.

commissary stores on military installations worldwide, employing a workforce of over 12,000 civilian full-time equivalents.<sup>178</sup>

**Defense Exchange and Commissary Stores Sectional Analysis**

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<p><b>Sec. 629</b> would extend commissary and exchange benefits for surviving remarried spouses with dependent children of a member of the Armed Forces who dies while on active duty or certain reserve duty.</p>	<p>No similar provision</p>	<p><b>Sec. 629</b> requires a report by the Comptroller General of the United States on implications of expansion of authority to provide financial assistance to civilian providers of child care services or youth program services for survivors of members of the Armed Forces who die in the line of duty.</p> <p><b>Sec. 629A</b> requires a report by the Secretary of Defense on the extension of commissary and exchange benefits for surviving remarried spouses with dependent children of servicemembers who die while on active duty or certain reserve duty.</p>
<p><b>Sec. 631</b> would provide base responders with essential needs and dining access.</p>	<p>No similar provision</p>	<p><b>Sec. 631</b> provides base responders with the use of commissary stores and MWR facilities by amending Chapter 54 of Title 10, U.S. Code by adding a new Section 1066.</p>
<p><b>Sec. 632</b> would provide first responder access to mobile exchanges.</p>	<p>No similar provision</p>	<p><b>Sec. 632</b> adopts Section 632 of the House Bill.</p>
<p><b>Sec. 633</b> would update business case analysis for consolidation of the Defense Resale System.</p>	<p>No similar provision</p>	<p><b>Sec 633</b> adopts Sec. 633 of the House Bill.</p>
<p>No similar provision</p>	<p><b>Sec. 381</b> would clarify food ingredient requirements for food or beverages provided by DOD.</p>	<p><b>Sec. 639</b> clarifies food ingredient requirements for food or beverages provided by the DOD.</p>

**Discussion.** Section 629 of the House-passed version would have extended commissary and exchange benefits for surviving remarried spouses with dependent children of a servicemember who dies while on active duty or certain types of reserve duty. Currently, widowed spouses with dependent children who remarry no longer have commissary and exchange privileges. This provision would have eliminated the administrative burden on a surviving remarried spouse or dependent child, including any requirement for a remarried spouse to apply as a personal agent for continued access to military installations in accompaniment of a dependent child. The Senate-passed S. 4049 had no provision. The FY2021 NDAA Section 629 requires the Comptroller General to submit a report within a year of enactment on the implications of expansion of the authority under Section 1798 of Title 10, U.S. Code, to provide financial assistance to civilian providers of child care services or youth program services for survivors of members of the Armed Forces who die in the line of duty, without regard to whether such deaths occurred in combat-

<sup>178</sup> DOD Office of the Under Secretary of Defense (Comptroller) Chief Financial Officer, *Defense Budget Overview Fiscal Year 2020 Budget Request*, February 2020, p. 2-7 (PDF p.28), Figure 2.2 Military Family Support Programs at [https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/fy2021\\_Budget\\_Request\\_Overview\\_Book.pdf](https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/fy2021_Budget_Request_Overview_Book.pdf)

related incidents. Elements of this report are to include data on the number of servicemembers who died in the line of duty; dependents who would be eligible for these services; the availability of these services; and the estimated cost of expanding these services.

The FY2021 NDAA Section 629A also requires the Secretary of Defense, in consultation with the Secretary of Homeland Security, to submit a report by March 1, 2021, to the Committees on Armed Services of the House and Senate on the DOD's procedures for an eligible remarried spouse to obtain access to a military installation to use a commissary store or MWR facilities to the same extent as a non-remarried spouse.

House Section 631 would have provided protective services civilian employees (security guards, firefighters, police and emergency management) located at a military installation access to dining and essential needs by charging them a user fee to purchase merchandise at a commissary store or MWR retail facility. Currently, these civilian employees are not allowed access to these facilities. Section 631 of the FY2021 NDAA adds a new Section 1066 to Chapter 54 of Title 10, U.S. Code that authorizes DOD to permit protective services employees to purchase food and hygiene items at a commissary or MWR retail facility on military installations.

House Section 632 provides first responders, as defined in Section 2 of the Homeland Security Act of 2002 (P.L. 107-296; 6 U.S.C. §101), access to mobile commissary or exchange stores when deployed to an area covered by a declaration of a major disaster or emergency.<sup>179</sup> The FY2021 NDAA adopted this House provision authorizing the Secretary of Defense to allow emergency responders to use a mobile commissary or exchange store deployed to an area declared as a major disaster or emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5170).

Section 633 of the House-passed version requires DOD to conduct a new business case analysis (BCA) incorporating the recommendations made by GAO in its April 2020 report. This provision requires additional comments from the military services to better inform the House and Senate Armed Services Committees. It requires a review of all consolidation perspectives before DOD can move forward with any possible reform efforts.<sup>180</sup> There are no similar provisions in the Senate-passed version of these House provisions. Section 633 of the FY2021 NDAA adopts this House provision and requires the Secretary of Defense to submit the updated BCA to the Committees on Armed Services of the House and Senate by June 1, 2021. In addition, this provision prohibits any action on consolidation until the Armed Service committees notify the Secretary of Defense in writing of receipt and acceptance of the updated analysis.

Section 381 of the Senate-passed bill would have required the Secretary of Defense to publish in the *Federal Register* a notice of a preliminary rule, statement, or "proposed action" regarding the limitation or prohibition of any food or beverage ingredient in military food service, military medical foods, commissary food, or commissary food service. The Secretary would have been required to provide opportunity for public comment before making any final determination. There is no similar House provision. The FY2021 NDAA includes a similar provision in Section 369 that food ingredient requirements for food and beverages provided by DOD be published in the *Federal Register* before making any final rule. It also includes a waiver for military operations or for the response to a national emergency declared by the President under the National Emergencies Act (50 U.S.C. §§1601 et seq.), a medical emergency, or a pandemic as well as any

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<sup>179</sup> Major disaster or emergency defined under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5170).

<sup>180</sup> Eryn Wagnon. "House NDAA Would Require New Case Study on Commissary-Exchange Consolidation," MOAA, July 1, 2020, at <https://www.moaa.org/content/publications-and-media/news-articles/2020-news-articles/advocacy/house-ndaa-would-require-new-case-study-on-commissary-exchange-consolidation/>.

recalls by the Food and Drug Administration (FDA) of certain ingredients that may be harmful for human consumption.

**References:** See CRS In Focus IF11089, *Defense Primer: Military Commissaries and Exchanges*, by Kristy N. Kamarck and Barbara Salazar Torreon.

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## Names and Symbols Linked to Confederate States

**Background.** On July 17, 2020, then-Secretary of Defense Mark Esper provided guidance to defense senior leaders and commanders on the public display or depiction of flags in the Department of Defense that omits the Confederate flag.<sup>181</sup> Some Members of Congress have expressed interest in renaming military installations named for leaders of the former Confederate States of America (C.S.A., Confederacy) but the DOD does not have a review process to reevaluate the naming of specific installations. Instead, each military department has its own naming convention. The Trump Administration strongly objected to renaming such military installations.<sup>182</sup> President Trump vetoed the enrolled NDAA bill, in part because it contained a provision to changes the current names.

### Names and Symbols Linked to Confederate States Sectional Analysis

House-Passed H.R. 6395	Senate-Passed S. 4049	P.L. 116-283
<b>Sec. 1749</b> would prohibit the display of the Confederate battle flag on DOD property.	No similar provision	Not adopted
<b>Sec. 2829</b> would require the Army to remove the names of Confederate States of America (CSA) military leaders from all installations and authorize the Secretary of Defense to establish an advisory panel to rename them within 1 year of enactment.	<b>Sec. 377</b> would require the DOD to establish a commission to conduct a two-year study of CSA commemoratives with the intention of removing and replacing Confederate names within three years of enactment.	<b>Sec. 370</b> requires the DOD to implement a plan by a commission established by the Secretary of Defense to remove and replace Confederate names from DOD assets within three years of enactment.

**Discussion.** Section 1749 of the House-passed bill would have prohibited display of the Confederate battle flag from “DOD property” defined as all installations, workplaces, common access areas; barracks, military housing, naval vessels, aircraft, government vehicles, hangars, streets, DOD schools, commissaries and exchanges, etc. Exceptions would have included DOD exhibits that are educational or historical displays in which the Confederate battle flag is not the main focus; a State flag that incorporates the Confederate battle flag; a State-issued license plate with a depiction of the Confederate battle flag; or a grave site of a Confederate soldier. Some contended that this provision was unnecessary following the release of the Secretary of Defense’s

<sup>181</sup> “Secretary of Defense Dr. Mark T. Esper Guidance on Public Display or Depiction of Flags in the Department of Defense,” DOD News, July 17, 2020, at <https://www.defense.gov/Newsroom/Releases/Release/Article/2278101/secretary-of-defense-dr-mark-t-esper-guidance-on-public-display-or-depiction-of/>.

<sup>182</sup> The White House, “Presidential Veto Message to the House of Representatives for H.R. 6395,” December 23, 2020, at <https://trumpwhitehouse.archives.gov/briefings-statements/presidential-veto-message-house-representatives-h-r-6395/>; and Leo Shane III, “Trump vows bases named for Confederate leaders ‘will not be changing,’” *Military Times*, July 24, 2020, at <https://www.militarytimes.com/news/pentagon-congress/2020/07/24/trump-vows-bases-named-for-confederate-leaders-will-not-be-changing/>.

flag guidance memorandum on July 16, 2020, which prohibits the Confederate battle flag by its omission from a list of authorized flags.<sup>183</sup> The Senate-passed version had no similar provision. The House provision was not adopted.

Section 2829 of the House-passed version would have required the Army to remove the names on all installations named for Confederate military leaders within one year of enactment.

Section 377 of the Senate-passed version would have required the establishment of a commission to study the issue of CSA commemoratives including flags, statues, memorials and monuments with the intention of removing Confederate names from DOD property within three years of enactment. Viewpoints from local communities affected by the name changes would also have been considered by the commission to make the final determination. Confederate grave markers in military cemeteries would have been exempt. This provision did not cover Department of Veterans Affairs (VA) cemeteries or state cemeteries receiving funding from the VA's National Cemetery Administration (NCA). The Senate-passed version would have authorized \$2 million for the commission's work from the Army's Operations and Maintenance budget.

Section 370 of the FY2021 NDAA contains a provision that requires the DOD to implement a plan by a commission established by the Secretary of Defense to conduct a study of CSA commemoratives with the intention of removing and replacing Confederate names from DOD assets within three years of enactment. The eight commission members shall comprise four appointed by the Secretary of Defense; one appointed by the Chair of the Senate Armed Services Committee; one appointed by the Ranking Member of the Senate Armed Services Committee; one appointed by the Chair of the House Armed Services Committee; and one appointed by the Ranking Member of the House Armed Services Committee.<sup>184</sup> The commission shall brief its findings to the Armed Services Committees after compiling a list of assets to be removed or renamed; determining costs associated with the removal or renaming of assets; and establishing criteria and requirements used to nominate and rename these assets. DOD assets are defined in this section as "any base, installation, street, building, facility, aircraft, ship, plane, weapon, equipment, or any other property owned or controlled by the Defense Department." This includes a review of monuments but excludes grave markers. The commission will be expected to further define what constitutes a grave marker. Section 370 authorizes \$2 million for the commission's work from the Army's Operations and Maintenance budget for FY2021.

Proponents of renaming the installations contend that there are diverse, noteworthy deceased military leaders from more recent conflicts who demonstrated selfless service and sacrifice, including Medal of Honor recipients, who would be more appropriate for such an honor. Opponents of renaming these installations cite the bureaucracy of creating a new review process

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<sup>183</sup> Secretary of Defense, "Public Display or Depiction of Flags in the Department of Defense," Memorandum, July 16, 2020, at <https://media.defense.gov/2020/Jul/17/2002458783/-1/-1/200717-FLAG-MEMO-DTD-200716-FINAL.PDF>.

<sup>184</sup> During the final days of the Trump Administration, then Acting Secretary of Defense Chris Miller announced the names of four appointments to the Commission. DOD News, January 8, 2021, at "Department of Defense Announces New Appointments," at <https://www.defense.gov/Newsroom/Releases/Release/Article/2466980/departments-of-defense-announces-new-appointments/>. However, under the Biden Administration on February 12, 2021, Secretary of Defense Lloyd Austin appointed four new commissioners. See "Statement by Secretary of Defense Lloyd J. Austin III on the Department's Representatives to the Congressionally-Mandated Commission on the Naming of Items in the Department of Defense That Commemorate the Confederate States of America," DOD News Release, February 12, 2021, at <https://www.defense.gov/Newsroom/Releases/Release/Article/2502459/statement-by-secretary-of-defense-lloyd-j-austin-iii-on-the-departments-represe/>. See CRS Insight IN10756, *Confederate Names and Military Installations*, by Barbara Salazar Torreon, for more information.

and the difficulty of satisfying the various viewpoints over which names (if any) would be selected as subjects of contention.

**References:** See CRS Insight IN10756, Confederate Names and Military Installations, by Barbara Salazar Torreon; CRS Report R44959, Confederate Symbols: Relation to Federal Lands and Programs, coordinated by Laura B. Comay, in the section on the “Department of Defense;” and CRS Report RS22478, Navy Ship Names: Background for Congress, by Ronald O'Rourke, in the section, “Ships Named for the Confederacy or Confederate Officers.”

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