



# Defense and Homeland Security

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## EXECUTIVE SUMMARY

Since the earliest days of our country's founding, there has been no clearer role for the federal government than to "provide for the common defense." America's role in the world has changed significantly in the more than 200 years since those words were written in the preamble to the Constitution. Since the end of the Cold War and the collapse of the Soviet Union, America's capability to project force around the world has been unrivaled by that of any other nation and with more than 1.4 million military personnel deployed in more than 145 countries worldwide. Combined with a defense budget nearly seven times the size of any other nation, the threat of a conventional invasion of the United States homeland seems remote. The position of the United States in the 21st century brings its own unique threats to American security. No event has illustrated this point more clearly than the attacks of Sept. 11, 2001, which thrust the threat of international terrorism into the forefront of our national awareness.

America's interests span the world and its military has global reach and responsibilities. The Department of Defense (DoD) is America's oldest and largest government agency. Today the DoD is not only in charge of the military, but it also employs a civilian force of thousands. The president, in the constitutional role as commander-in-chief of the armed forces, is the senior military authority in the nation and as such, is ultimately responsible for the protection of the United States from all enemies, foreign and domestic.

Further, the Secretary of Defense, currently Leon Panetta, is also a civilian who is appointed by the president. Under the Secretary of Defense are the four military branches: the Departments of the Army, the Navy and the Air Force; and the United States Marine Corps. Additionally, immediately under the Secretary of Defense are the Chairman and Vice Chairman of the Joint Chiefs of Staff and the Unified Combatant Commands. The Defense Secretary is also a member of the Cabinet and of the National Security Council.

The Joint Chiefs of Staff are comprised of the Army Chief of Staff, Air Force Chief of Staff, the Chief of Naval Operations, the Marine Corps Commandant, the Chief of the National Guard Bureau, the Vice Chairman of the Joint Chiefs of Staff and the Chairman of the Joint Chiefs of Staff. During times of war or conflict, the Joint Chiefs of Staff bypass their respective civilian service secretaries on military operational matters.

The National Security Council is the president's principal forum for considering national security and foreign policy matters with his senior national security advisors and cabinet officials. The NSC is chaired by the president and its regular attendees are the vice president, the Secretary of State, Secretary of Treasury, Secretary of Defense and the Assistant to the President for National Security Affairs. The Chairman of the Joint Chiefs of Staff is the statutory military advisor to the NSC and the Director of National Intelligence is the intelligence advisor.

There are four military branches in the United States military: the Army, Navy, Air Force and the Marine Corps. Additionally, the United States Coast Guard does not actually fall under the DoD, but falls under the Department of Homeland Security (DHS). It is still considered a military service, however, because during times of war or conflict, the president can transfer Coast Guard assets to the Department of the Navy.

The Secretary of Defense exercises his authority over how the military is trained and equipped through the Service secretaries, but uses a totally different method to exercise his authority to deploy troops and exercise military power. This latter authority is directed to each one of the nine Unified Combatant Commands. These nine Commands are: Northern Command, European Command, Central Command, Southern

Command, Pacific Command, Africa Command, Strategic Command, Special Operations Command and Transportation Command.

The Department of Homeland Security (DHS) was established in 2002, following the 9/11 terrorist attacks. DHS is the third largest cabinet department behind DoD and Veterans Affairs. It is headed by the current Secretary of Homeland Security, Janet Napolitano. The overriding mission of DHS is to lead the unified national effort to defend the homeland against terrorism as well as preparation for and response to all hazards and disasters. Agencies and departments that fall under DHS include the Federal Law Enforcement Training Center (FLETC), the Transportation Security Administration (TSA), the United States Customs and Border Protection (CBP), the United States Immigration and Customs Enforcement (ICE), the Coast Guard, the Federal Emergency Management Agency (FEMA) and the Secret Service.

In the current 112th Congress, House Republicans have undertaken the difficult task of passing legislation that balances the intelligence and resource needs of the U.S. military, national defense and homeland security with the need to protect constitutionally guaranteed civil liberties and reduce federal spending and reign in the deficit. Some examples of legislation include the extension of three expiring provisions of the PATRIOT Act, the National Defense Authorization Act (NDAA) and legislation intended to stop and replace the looming massive cuts to defense spending in FY 2013.

**Editor's note:** It should be noted that our nation's military is enormously sophisticated and complex in the structure of its command, its operational procedures and the breadth of its various missions and responsibilities. Should candidates desire to go more in-depth on this issue, particularly regarding defense policy, there are a variety of resources available. Please contact the NRCC for additional information.

## **THE PURPOSE OF OUR MILITARY**

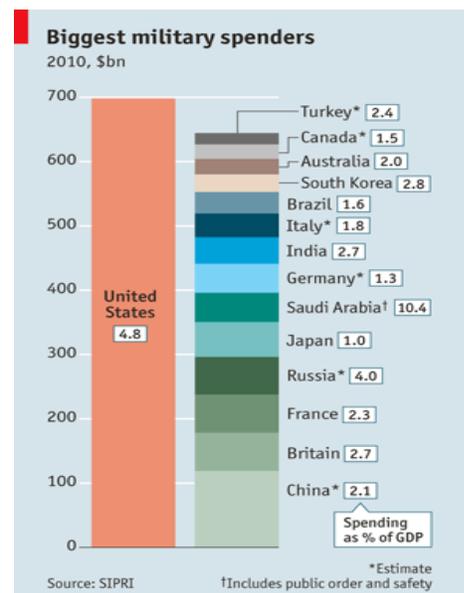
Since the earliest days of our country's founding, there has been no clearer role for the federal government than to "provide for the common defense." America's role in the world has changed significantly in the more than 200 years since those words were written in the preamble to the Constitution. While the mandate created by that phrase has remained intact throughout the years, evolving geo-political conditions and advances in technology have required our security policy to continually adapt to address new threats as they emerge.

Since the end of the Cold War and the collapse of the Soviet Union, America's capability to project force around the world has been unrivaled by that of any other nation and with more than [1.4 million military personnel deployed in more than 145 countries worldwide](#) and a defense budget nearly seven times the size of any other nation (see **Figure 1**), the threat of a conventional invasion of the United States homeland seems remote. The United States no longer faces – as in the Cold War – one dominant threat. Rather, it is the multiplicity and interconnectedness of potential threats – and the groups and individuals behind them – that constitute the United State's biggest security challenges. The position of the United States in the 21st century brings its own unique threats to American security. No event has illustrated this point more clearly than the attacks of Sept. 11, 2001, which thrust the threat of international terrorism into the forefront of our national awareness.

Although it has been more than 10 years since the 9/11 attacks, America is still faced with ongoing elevated threats to its security. Defense Secretary Leon Panetta [said](#) before the House Budget Committee on Feb. 29, 2012, "But despite what we have been able to achieve, unlike past draw downs when threats have receded, the United States still faces a complex array of security challenges across the globe: We are still a nation at war in Afghanistan; we still face threats from terrorism; there is dangerous proliferation of lethal weapons and materials; the behavior of Iran and North Korea threatens global stability; there is continuing turmoil and unrest in the Middle East; rising powers in Asia are testing international relationships; and there are growing concerns about cyber intrusions and attacks."

**Editor's Note:** For more information regarding Afghanistan, Iraq and the United States' military involvement in each country, please refer to the Afghanistan and Iraq chapter of the 2012 NRCC Issues Book. For more information regarding terrorism, specific countries of interest to the United States and international threats, please refer to the Foreign Affairs and International Concerns chapter of the 2012 NRCC Issues Book.

America's interests span the world, and its military has global reach and responsibilities. The U.S. military's primary purpose is to defend and to deter attacks on the homeland. When required, they must fight and win wars to protect our interests. They must be capable and ready to protect America, its citizens and its



**Figure 1**

interests anywhere they are threatened, by defending against traditional threats, threats from terrorist organizations and organized crime, and dangers from the lawlessness of collapsed states, such as civil unrest, genocide and piracy. This can only be achieved by giving the military the resources it needs to make us safer.

## THE STRUCTURE OF OUR MILITARY

The Department of Defense (DoD) is America's oldest and largest government agency. With our military tracing its roots back to pre-Revolutionary times, the DoD has grown and evolved with our nation.

Today, the DoD is not only in charge of the military, but it also employs a civilian force of thousands. With more than 1.4 million men and women on active duty and 684,000 civilian personnel, it is the nation's largest employer. Another 1.1 million serve in the National Guard and Reserve forces and more than 2 million military retirees and their family members receive benefits.

One of the most admirable features of our U.S. military is its civilian leadership. The president, in the constitutional role as commander-in-chief of the armed forces, is the senior military authority in the nation and as such, is ultimately responsible for the protection of the United States from all enemies, foreign and domestic. While many presidents have served in our nation's military (some at the highest levels) prior to their term in office, they were democratically elected as civilian leaders by the citizens of the United States. Further, the Secretary of Defense is also a civilian who is appointed by the president.

As part of the Constitution's system of checks and balances, the DoD budget must be approved by the U.S. Congress. Various committees of both houses primarily deal with funding, military operations and intelligence. Congressional decisions can directly affect the military and range from setting civilian pay raises to providing funding for major troop deployments.

Our present military organizational structure is a result of the National Security Act of 1947, which realigned and reorganized the armed forces and intelligence community in the aftermath of World War II. The Act merged the existing Department of War (Army) and Department of the Navy into the National Military Establishment, headed by the Secretary of Defense and established a new, separate Department of the Air Force. The Act was amended in 1949 to rename the National Military Establishment the U.S. Department of Defense and to further strengthen the leadership role of the Secretary of Defense over the respective services.

Since 1973, the U.S. Military has maintained an all-volunteer force, due to public dissatisfaction with the draft after Vietnam. The government does maintain an operational Selective Service System (a system for registering all males between the ages of 18 to 25 for the purpose of having information available about potential soldiers in the event of war) as a contingency. An all-volunteer force offers a military system consistent with American principles, minimizing government interference and allowing individuals to determine their own life choices in accord with their values. The all-volunteer force has changed the military for the better: boosting morale, increasing troop retention and increasing the proficiency and professionalism of the force.

### Leaders of the U.S. Military

**The current Secretary of Defense is Leon Panetta.** He is the principal defense policy adviser to the president and is responsible for the formulation of general defense policy and policy related to all matters of direct concern to the DoD, and for the execution of approved policy. Under the direction of the president, the secretary exercises authority, direction and control over the DoD. The Secretary of Defense is a member of the President's Cabinet and of the National Security Council.

Under the Secretary of Defense are the four military branches: the Departments of the Army, the Navy and the Air Force; and the United States Marine Corps. Additionally, immediately under the Secretary of Defense are the Chairman and Vice Chairman of the Joint Chiefs of Staff and the Unified Combatant Commands.

***Editor's Note:** In April 2011, President Obama selected Leon Panetta, who was then serving as director of the Central Intelligence Agency (CIA), to replace Robert M. Gates as United States Secretary of Defense upon Gates' long anticipated departure in the summer of 2011. Additionally, Gen. David Petraeus, the high-profile commander of the wars in Iraq and Afghanistan, replaced Panetta at the CIA, after helping to manage the first steps of the drawdown of U.S. troops in Afghanistan.*

**The current Secretary of the Army is John McHugh.** He has responsibility for all matters relating to the United States Army: manpower, personnel, reserve affairs, installations, environmental issues, weapons systems and equipment acquisition, communications and financial management. He is responsible for implementation of policies and programs that are consistent with the national security policies and objectives established by the president and the Secretary of Defense. For more information regarding United States Army leadership, please visit <http://www.army.mil/leaders/>.

**The current Secretary of the Navy is Ray Mabus.** He is responsible for conducting all the affairs of the Department of the Navy including recruiting, organizing, supplying, equipping, training and mobilizing. Additionally, he oversees the construction, outfitting, and repair of naval ships, equipment and facilities, and is responsible for the formulation and implementation of policies and programs that are consistent with the national security policies and objectives established by the president and the Secretary of Defense. For more information regarding United States Navy leadership, please visit [http://www.navy.mil/navydata/bios/bio\\_list.asp](http://www.navy.mil/navydata/bios/bio_list.asp).

**The current Commandant of the Marine Corps is General James F. Amos.** In the civilian leadership structure of the United States military, the Marine Corps is a component of the U.S. Navy often working closely with U.S. naval forces for training, transportation and logistical purposes. However, in the military leadership structure, the Marine Corps is a separate branch. The Commandant of the Marine Corps (CMC) is the highest ranking officer in the Marine Corps, is a member of the Joint Chiefs of Staff and reports directly to the Secretary of the Navy. The CMC is responsible for ensuring the organization, policy, plans and programs for the Marine Corps as well as advising the president, the Secretary of Defense, the National Security Council, the Homeland Security Council and the Secretary of the Navy on matters involving the Marine Corps. For more information regarding United States Marine Corps, please visit <http://www.marines.mil/usmc/Pages/leaders.aspx>.

**The current Secretary of the Air Force is Michael B. Donley.** He has responsibility for all matters relating to the United States Air Force including the organizing, training, equipping and providing for air, space and cyber capabilities that are consistent with the national security policies and objectives established by the president and the Secretary of Defense. For more information regarding United States Air Force, please visit <http://www.af.mil/information/afchain/index.asp>.

**The current Commandant of the United States Coast Guard is Admiral Robert J. Papp, Jr.** While the Coast Guard operates under the Department of Homeland Security (DHS) (and has since 2003) during peacetime, it can be transferred to the Department of the Navy by the president at any time, or by Congress during time of war. The Commandant of the Coast Guard and the Coast Guard **does not fall under the DoD**. The Commandant reports to the president via the Secretary of Homeland Security. For more

information regarding United States Coast Guard leadership, please visit <http://www.uscg.mil/seniorleadership/>.



### **The Joint Chiefs of Staff**

The Joint Chiefs of Staff are comprised of the Army Chief of Staff, Air Force Chief of Staff, Chief of Naval Operations, Marine Corps Commandant, Chief of the National Guard Bureau, the Vice Chairman of the Joint Chiefs of Staff and the Chairman of the Joint Chiefs of Staff. The Chairman is nominated by the president and approved by the Senate. During times of war or conflict, the Joint Chiefs of Staff bypass their individual civilian service secretaries and report directly to and advise the Secretary of Defense and the president on military operational matters. For more information regarding the Joint Chiefs of Staff, please visit <http://www.jcs.mil/>.

**The current Chairman of the Joint Chiefs of Staff is General Martin E. Dempsey.** He serves as the nation's highest ranking military officer and principal military advisor to the president, the Secretary of Defense, the National Security Council and the Homeland Security Council. While the Chairman outranks all other officers, he does not have operational command authority over the Armed Forces.

**The current Vice Chairman of the Joint Chiefs of Staff is Admiral James A. Winnefeld, Jr.** In this capacity, he is a member of the Joint Chiefs of Staff and the nation's second highest-ranking military officer.

**The current Army Chief of Staff is General Raymond T. Odierno.**

**The current Air Force Chief of Staff is General Norton A. Schwartz.**

**The current Chief of Naval Operations is Admiral Jonathan W. Greenert.**

As previously mentioned, **the current Commandant of the Marine Corps is General James Amos.**

**The current Chief of the National Guard Bureau is General Craig R. McKinley.**

### **The National Security Council**

The National Security Council (NSC) is the president's principal forum for considering national security and foreign policy matters with his senior national security advisors and cabinet officials. Since its inception under President Truman, the Council's function has been to advise and assist the president on national security and foreign policies. The Council also serves as the president's principal arm for coordinating these policies among various government agencies.

The NSC is chaired by the president. Its regular attendees (both statutory and non-statutory) are the Vice President, the Secretary of State, the Secretary of the Treasury, the Secretary of Defense and the Assistant to the President for National Security Affairs. The Chairman of the Joint Chiefs of Staff is the statutory military advisor to the Council and the Director of National Intelligence is the intelligence advisor. The Chief of Staff to the President, Counsel to the President and the Assistant to the President for Economic Policy are invited to attend any NSC meeting. The Attorney General and the Director of the Office of

Management and Budget (OMB) are invited to attend meetings pertaining to their responsibilities. The heads of other executive departments and agencies, as well as other senior officials, are invited to attend meetings of the NSC when appropriate.

### Military Branches

**Army:** The Army is the oldest and largest military service, officially established by the Continental Congress on June 14, 1775. The Army is the main ground-force of the United States. It defends the land mass of the United States, its territories, commonwealths and possessions; it operates in more than 50 countries. It is commanded by a four-star general, known as the Army Chief of Staff, who reports to the Secretary of the Army.



**Navy:** The Navy was officially established by the Continental Congress in 1775. The Navy's primary mission is to maintain the freedom of the seas. It is America's forward-deployed force, is a major deterrent to aggression around the world and makes it possible for the United States to "project force" when and where our national interests require it. Additionally, the Navy helps to supplement Air Force air power by deploying aircraft carriers to areas where fixed runways are unavailable dependent on the situation at hand. The Navy is commanded by a four-star admiral, called the Chief of Naval Operations, who reports to the Secretary of the Navy.

**Air Force:** Prior to 1947, the Air Force was a separate corps of the Army. The primary mission of the Army Air Corps was to support Army ground forces. In the aftermath of World War II, it was clear that air power had much more potential than performing ground support. Subsequently, the Air Force was established as a separate service with a primary mission to defend the United States and its interests through utilization of air and space. Today, the Air Force provides a rapid, flexible, and when necessary, lethal air and space capability that can deliver forces anywhere in the world. The Air Force is also responsible for all military satellites, newly advancing cyber-defense efforts and controls all of our nation's strategic nuclear ballistic missiles. The top military member in the Air Force is a four-star general, known as the Air Force Chief of Staff, who reports to the Secretary of the Air Force.



**Marine Corps:** The Marines were officially established by the Continental Congress in 1775, to act as a landing force for the U.S. Navy (often referred to as the "Infantry of the Navy"). In 1798, however, Congress established the Marine Corps as a separate service. While amphibious operations are their primary specialty, in recent years the Marines have expanded other combat operations. The Marine Corps maintains ready expeditionary forces, sea-based and integrated air-ground units for contingency and combat operations and the means to stabilize or contain international disturbance. The Marines are commanded by a four-star general, the Commandant of the Marine Corps, who reports to the Secretary of the

Navy.

**Coast Guard:** The Coast Guard does not actually fall under the DoD. Until 2003, the Coast Guard fell under the Department of Transportation and has since been moved to the Department of Homeland Security. During times of war or conflict, the president of the United States can transfer Coast Guard assets to the Department of the Navy. Because of this, the Coast Guard is still considered a military service. The Coast Guard provides law and maritime safety enforcement, marine and environmental protection and military naval support.



### Unified Combatant Commands

The Secretary of Defense exercises his authority over how the military is trained and equipped through the Service secretaries, but uses a totally different method to exercise his authority to deploy troops and exercise military power. This latter authority is directed, with the advice of the Chairman of the Joint Chiefs of Staff, to each one of the Unified Combatant Commands. The Unified Combatant Commands are the direct link from the military forces to the president and the Secretary of Defense. Each one of the Unified Combatant Commands is a command with a broad continuing mission under a single commander and composed of significant assigned components of two or more military departments. For more information regarding the Unified Combatant Commands as a whole, please visit [http://www.defense.gov/home/features/2009/0109\\_unifiedcommand/](http://www.defense.gov/home/features/2009/0109_unifiedcommand/).



**Northern Command (USNORTHCOM):** Northern Command oversees the defense of the continental United States, coordinates security and military relationships with Canada and Mexico and directs military assistance to U.S. civil authorities. For detailed information about U.S. Northern Command please visit: <http://www.northcom.mil>.

**European Command (EUCOM):** Headquartered in Stuttgart, Germany, the European Command covers more than 13 million square miles and includes 93 countries and territories including Iceland, Greenland, the Azores, more than half of the Atlantic ocean, the Caspian sea and Russia. This territory extends from the North Cape of Norway, through the waters of the Baltic and Mediterranean seas, most of Europe and parts of the Middle East to the Cape of Good Hope in South Africa. For detailed information about U.S. European Command please visit: <http://www.eucom.mil>.



**Central Command (USCENTCOM):** Headquartered in Tampa, Fla., Central Command oversees the balance of the Middle East, North Africa, central Asia, and, most notably, Afghanistan and Iraq. For detailed information about U.S. Central Command, please visit: <http://www.centcom.mil>.

**Southern Command (USSOUTHCOM):** Based out of Miami, Fla., Southern Command guards U.S. interests in the southern hemisphere, including Central America, South America and the Caribbean. For detailed information about U.S. Southern Command please visit: <http://www.southcom.mil>.



**Pacific Command (USPACOM):** Headquartered in Honolulu, Hawaii, Pacific Command covers 50 percent of the Earth's surface including Southwest Asia, Australia, and shares with U.S. Northern Command responsibility for Alaska. For detailed information about U.S. Pacific Command please visit: <http://www.pacom.mil>.

**Africa Command (USAFRICOM):** Africa Command started operations in October 2007. Its mission entails coordinating the kind of support that will enable African governments (all of Africa except for Egypt) and existing regional organizations to have greater capacity to provide security and respond in times of need. For detailed information about U.S. Africa Command, please visit: <http://www.africom.mil>.



**Strategic Command (USSTRATCOM):** Based in Nebraska, the Strategic and Space Commands merged in 2002 and is now known as Strategic Command, which is responsible for controlling space, deterring attacks on the United States and its allies, launching and operating the satellites systems that support our forces worldwide and should deterrence fail, directing the use of our strategic forces. For detailed information about U.S. Strategic Command please visit: <http://www.stratcom.mil>.

**Special Operations Command (USSOCOM):** Special Operations Command provides counter-paramilitary, counter-narcotics, guerilla, psychological warfare, civil education and insurgency capabilities in support of U.S. national and international interests. Headquartered in Tampa, Fla., Special Operations Command is responsible for special military support. For detailed information about U.S. Special Operations Command please visit: <http://www.socom.mil/>.



**Transportation Command (USTRANSCOM):** Located at Scott Air Force Base in Illinois, the Transportation Command provides air, land and sea transportation for the DoD in times of peace and war. It moves people and property around the world. For detailed information about U.S. Transportation Command please visit: <http://www.transcom.mil/>.

## Military Rankings Reference

### U.S. Army Enlisted Rankings

Insignia	Rank	Abbreviation
NONE	Private	PVT
	Private E-2	PV2
	Private First Class	PFC
	Corporal	CPL
	Specialist	SPC
	Sergeant	SGT
	Staff Sergeant	SSG

	Sergeant First Class		SFC		
		Master Sergeant	First Sergeant	MSG	1SG
		Sergeant Major	Command Sergeant Major	SGM	CSM
	Sergeant Major of the Army		SMA		

### U.S. Army Officer Rankings

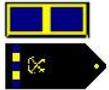
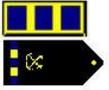
Insignia	Rank	Abbreviation
	Warrant Officer 1	WO1
	Chief Warrant Officer 2	CW2
	Chief Warrant Officer 3	CW3
	Chief Warrant Officer 4	CW4
	Chief Warrant Officer 5	CW5
	Second Lieutenant	2LT
	First Lieutenant	1LT
	Captain	CPT
	Major	MAJ
	Lieutenant Colonel	LTC
	Colonel	COL
	Brigadier General	BG

	Major General	MG
	Lieutenant General	LTG
	General	GEN
	General of the Army (reserved for wartime only)	GA

### U.S. Navy/Coast Guard Enlisted Rankings

Insignia	Rank	Abbreviation		
NONE	Seaman Recruit	SR		
	Seaman Apprentice	SA		
	Seaman	SN		
	Petty Officer Third Class	PO3		
	Petty Officer Second Class	PO2		
	Petty Officer First Class	PO1		
	Chief Petty Officer	CPO		
	Senior Chief Petty Officer	SCPO		
 	Master Chief Petty Officer	Fleet/Command Master Chief Petty Officer	MCPO	FLTCM / MCPOC
	Master Chief Petty Officer of the Navy	Master Chief Petty Officer of the Coast Guard	MCPON	MCPOCG

## U.S. Navy/Coast Guard Officer Rankings

Insignia	Rank		Abbreviation
	USN Warrant Officer 1		WO1
 	USN Chief Warrant Officer 2	USCG Chief Warrant Officer 2	CWO2
 	USN Chief Warrant Officer 3	USCG Chief Warrant Officer 3	CWO3
 	USN Chief Warrant Officer 4	USCG Chief Warrant Officer 4	CWO4
	USN Chief Warrant Officer		CWO5
	Ensign		ENS
	Lieutenant, Junior Grade		LTJG
	Lieutenant		LT
	Lieutenant Commander		LCDR
	Commander		CDR
	Captain		CAPT
	Rear Admiral (Lower Half)		RDML
	Rear Admiral (Upper Half)		RADM
	Vice Admiral		VADM

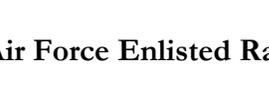
	Admiral	Commandant of the Coast Guard	ADM
	Fleet Admiral (reserved for wartime only)		FADM

### U.S. Marine Corps Enlisted Rankings

Insignia	Rank		Abbreviation	
NONE	Private		PVT	
	Private First Class		PFC	
	Lance Corporal		LCpl	
	Corporal		Cpl	
	Sergeant		Sgt	
	Staff Sergeant		SSgt	
	Gunnery Sergeant		GySgt	
	Master Sergeant	First Sergeant	MSgt	
	Master Gunnery Sergeant	Sergeant Major	MGySgt	SgtMaj
	Sergeant Major of the Marine Corps		SgtMajMC	

### U.S. Marine Corps Officer Rankings

Insignia	Rank	Abbreviation
	Warrant Officer 1	WO

	Chief Warrant Officer 2	CWO2
	Chief Warrant Officer 3	CWO3
	Chief Warrant Officer 4	CWO4
	Chief Warrant Officer 5	CWO5
	Second Lieutenant	2ndLt
	First Lieutenant	1stLt
	Captain	Capt
	Major	Maj
	Lieutenant Colonel	LtCol
	Colonel	Col
	Brigadier General	BGen
	Major General	MajGen
	Lieutenant General	LtGen
	General	Gen

**U.S. Air Force Enlisted Rankings**

Insignia	Rank	Abbreviation
NONE	Airman Basic	WO
	Airman	Amn

	Airman First Class		A1C					
	Senior Airman		SrA					
	Staff Sergeant		SSgt					
	Technical Sergeant		TSgt					
		Master Sergeant	First Sergeant	MSgt				
		Senior Master Sergeant	First Sergeant	SMSgt				
			Chief Master Sergeant	First Sergeant	Command Chief Master Sergeant	CMSgt		
		Chief Master Sergeant of the Air Force		CMSAF				

**U.S. Air Force Officer Rankings**

Insignia	Rank	Abbreviation
	Second Lieutenant	2dLt
	First Lieutenant	1st Lt
	Captain	Capt
	Major	Maj
	Lieutenant Colonel	Lt Col

	Colonel	Col
	Brigadier General	Brig Gen
	Major General	Maj Gen
	Lieutenant General	Lt Gen
	General	Gen
	General of the Air Force (reserved for wartime only)	

## THE DEPARTMENT OF HOMELAND SECURITY

The overriding mission of the Department of Homeland Security (DHS) is to lead the unified national effort to defend the homeland against terrorism as well as preparation for and response to all hazards and disasters. Before the establishment of the Department of Homeland Security in 2002, homeland security activities were spread across more than 40 federal agencies and an estimated 2,000 separate Congressional appropriations accounts. Eleven days after the Sept. 11, 2001, terrorist attacks, President George W. Bush announced his proposal for an Office of Homeland Security in the White House with Pennsylvania Governor Tom Ridge as its director. The office would oversee and coordinate a comprehensive national strategy to safeguard the country against terrorism and respond to any future attacks.



Although the president of the United States may propose legislation, only Congress can sponsor and pass it. On June 18, 2002, President Bush formally submitted to Congress his proposal for a new Cabinet-level department, the Department of Homeland Security, including his proposed text for the Homeland Security Act of 2002. The Department was also supported by the 9/11 Commission. President George W. Bush signed the Homeland Security Act of 2002 (P.L. 107-296) into law on Nov. 25, 2002, transferring the functions, relevant funding and most of the personnel of 22 agencies and offices to the new Department of Homeland Security (DHS).

DHS is the third largest Cabinet department behind DoD (largest) and Veterans Affairs (second largest). It is headed by the Secretary of Homeland Security who is currently Janet Napolitano.

### DHS Components

**National Protection and Programs Directorate (NPPD):** The goal of the NPPD is to advance DHS's risk-reduction mission. Reducing risk requires an integrated approach that encompasses both physical and virtual threats and their associated human elements. The NPPD contains the following divisions:

- **Federal Protective Service (FPS)** – FPS is a federal law enforcement agency that provides integrated security and law enforcement services to federally-owned and –leased buildings, facilities, properties and other assets.
- **Office of Cybersecurity and Communications (CS&C)** – CS&C has the mission of assuring the security, resiliency and reliability of the nation's cyber and communications infrastructure.
- **Office of Infrastructure Protection (IP)** – IP leads the coordinated national effort to reduce risk to our critical infrastructure posed by acts of terrorism.
- **Office of Risk Management and Analysis (RMA)** – RMA serves as DHS' Executive Agent for national risk management and analysis.
- **US-VISIT** – US-Visit uses innovative biometrics-based technological solutions to provide decision makers with accurate information when and where they need it.

**Science and Technology Directorate (S&T):** S&T is the primary research and development arm of DHS and provides federal, state and local officials with the technology and capabilities to protect the homeland. For more information regarding the Secret Service, please visit

**Directorate for Management:** The Directorate for Management is responsible for DHS's budgets and appropriations, expenditure of funds, accounting and finance; procurement; human resources and personnel; information technology systems; facilities, property and equipment, and the identification and tracking of DHS-related performance measurements. For more information regarding the Secret Service, please visit

**Office of Policy:** The Office of Policy is the primary policy formulation and coordination component for DHS. It provides a centralized, coordinated focus to the development of Department-wide, long-range planning to protect the United States. For more information regarding the Secret Service, please visit

**Office of Health Affairs (OHA):** OHA coordinates all medical activities of DHS to ensure appropriate preparation for and response to incidents having medical significance. OHA serves as the principal advisor to the Secretary of DHS and the Federal Emergency Management Agency (FEMA) Administrator on medical and public health issues. For more information regarding the Secret Service, please visit

**Office of Intelligence and Analysis (I&A):** I&A is responsible for using information and intelligence from multiple sources to identify and assess current and future threats to the United States. For more information regarding the Secret Service, please visit

**Office of Operations Coordination and Planning:** The Office of Operations Coordination and Planning is responsible for monitoring the security of the United States on a daily basis and coordinating activities within DHS and with governors, Homeland Security Advisors, law enforcement partners and critical infrastructure operators in all 50 states and more than 50 major urban areas nationwide. For more information regarding the Secret Service, please visit

**Federal Law Enforcement Training Center (FLETC):** FLETC provides career-long training to law enforcement professionals to help them fulfill their responsibilities safely and proficiently. It serves as an interagency law enforcement training organization for 90 federal agencies and is headquartered at Glynco, Ga. Additionally, FLETC operates two other residential training sites in Artesia, N.M. and Charleston, S.C., as well as a non-residential in-service re-qualification and advanced training facility in Cheltenham, Md., for use by agencies with large concentrations of personnel in the Washington, D.C. area. For more information regarding FLETC, please visit <http://www.fletc.gov/>.

**Domestic Nuclear Detection Office (DNDO):** DNDO is a jointly staffed agency within DHS and works to enhance the nuclear detection efforts of federal, state, territorial, tribal and local governments, and the private sector, to ensure a coordinated response to such threats. DNDO is the primary entity in the U.S. government for implementing domestic nuclear detection efforts for a managed and coordinated response to radiological and nuclear threats, as well as integration of federal nuclear forensics programs.

**Transportation Security Administration (TSA):** TSA protects the nation's transportation systems to ensure freedom of movement for people and commerce. The Federal Air Marshal Service serves as the primary law enforcement entity within TSA. For more information regarding TSA, please visit <http://www.tsa.gov/>.

**United States Customs and Border Protection (CBP):** CBP is responsible for protecting our nation's borders in order to prevent terrorists and terrorist weapons from entering the United States. It also has a responsibility for securing and facilitating trade and travel while enforcing hundreds of U.S. regulations, including immigration and drug laws. For more information regarding CBP, please visit <http://www.cbp.gov/>.

**United States Citizenship and Immigration Services (USCIS):** USCIS is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration service's policies and priorities. It oversees lawful immigration to the United States. For more information regarding USCIS, please visit <http://www.uscis.gov/portal/site/uscis>.

**United States Immigration and Customs Enforcement (ICE):** ICE is the principal investigative arm of the DHS and is the second largest investigative agency in the federal government. ICE is responsible for identifying and shutting down vulnerabilities in and along the nation's border and economic and transportation and infrastructure security. For more information regarding ICE, please visit <http://www.ice.gov/>.

**United States Coast Guard (USCG):** The Coast Guard protects the public, the environment, and U.S. economic interests—in the nation's ports and waterways, along the coast, on international waters or in any maritime region as required to support national security. The Coast Guard is one of five armed forces of the United States and the only military organization within DHS. For more information regarding the Coast Guard, please visit <http://www.uscg.mil/>.

**United States Secret Service:** The Secret Service protects the president and other high-level officials and investigates counterfeiting and other financial crimes, including financial institution fraud, identity theft, computer fraud and computer-based attacks on our nation's financial, banking and telecommunications infrastructure. For more information regarding the Secret Service, please visit <http://www.secretservice.gov/>.

**Federal Emergency Management Agency (FEMA):** FEMA prepares the nation for hazards, manages federal response and recovery efforts following any national incident and administers the National Flood Insurance Program. FEMA's mission is to support our citizens and first responders to ensure that, as a nation, we work together to build, sustain and improve our capability to prepare for, protect against, respond to, recover from and mitigate all hazards. For more information regarding FEMA, please visit <http://www.fema.gov/>.

### **Transportation Security Administration (TSA)**

Following the 9/11 terrorist attacks, Congress took swift action to create the Transportation Security Administration (TSA) by enacting the Aviation and Transportation Security Act (P.L. 107-71). In 2002, TSA was transferred to DHS with enactment of the Homeland Security Act (P.L. 107-296). TSA is charged with protecting air, land and rail transportation systems within the United States.

TSA deploys large numbers of armed air marshals on commercial passenger flights and remains specifically focused on screening passengers, baggage and air cargo for explosives and other threats and considerable challenges remain in effectively screening for explosive threats. Challenges also remain regarding the effective use of watch lists and intelligence information to detect and deter individuals who may pose a

threat to civil aviation. Finally, challenges remain regarding effective regulation and oversight of airport security measures and access control technologies and procedures.

**Screening:** Prior to 9/11, explosives screening within aviation was limited in scope and focused on selective screening of checked baggage placed on international passenger flights. But, immediately following 9/11 with the creation of TSA, 100 percent screening of all checked baggage placed on domestic and international passenger flights to and from the United States was mandated. In 2004, the 9/11 Commission recommended that TSA give priority attention to implementing technologies and procedures for screening passengers for explosives. The bombing of two Russian airliners in August 2004, shortly after the release of the [9/11 Commission's report](#), focused considerable attention on this issue. Based on the 9/11 Commission's recommendation, Congress included provisions in the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) directing TSA to improve checkpoint screening technologies capable of detecting explosives. Initially, TSA tested walkthrough portals that analyze samples of air passed over individuals for traces of explosives. TSA, however, considered these to be unreliable in the airport environment and has more recently focused on whole body imaging (WBI) technologies. Recent attention has particularly focused on improving explosives screening of passengers in response to continued threats such as the 2009 "Christmas Day bomber" who attempted to blow up Northwest Airlines flight 253 with an explosive device concealed in his underwear.

In response to this incident, the Obama Administration accelerated deployment of Advanced Imaging Technology (AIT) WBI screening devices and other technologies at passenger screening checkpoints. Previously, the systems were used only on a trial basis at a small number of airports. These systems, which TSA refers to as AIT systems, capture an image of what lies underneath one's clothing. AIT systems do not specifically identify explosives, but can reveal concealed items that would not be detected by walkthrough metal detectors including explosives and non-metallic weapons. If a concealed item is detected, TSA procedures require that screeners use additional inspection methods to determine whether the item is a threat. These methods may include pat-downs, visual inspection or swabbing someone's skin and/or clothing to obtain a sample to analyze for traces of explosives.

In addition to AIT, next generation screening technologies for airport screening checkpoints include advanced technology x-ray systems for screening carry-on baggage, bottled liquids scanners, cast and prosthesis imagers, shoe scanning devices and portable explosives trace detection equipment. The use of AIT technologies has raised a number of policy questions.

Privacy advocates have objected to the intrusiveness of AIT, particularly if used for primary screening. The screening of children, the elderly and those with medical conditions and disabilities has been particularly contentious. Recent changes to pat-down screening procedures, involving more detailed inspection of private areas, have also raised privacy concerns. To allay privacy concerns, TSA currently requires remote screening of images outside of public view and forbids recording or storage of AIT images. It has also begun implementing automated threat detection capabilities that will eventually eliminate the need for TSA screeners to view AIT-generated images.

Other concerns about TSA and its use of AIT technologies include the amount of time it takes to screen passengers and the possible medical risks posed by backscatter x-ray systems, despite assurances that the radiation doses from screening are comparatively small.

**No-Fly/Watch Lists:** The failed bombing attempt of Northwest Airlines flight 253 also raised policy questions regarding the effective use of terrorist watch lists and intelligence information to identify those

who may pose a threat. Specific failures to add a suspect to either the no-fly or selectee list - such as the “Times Square Bomber” in 2010 who was permitted to board an international flight to Dubai even after having been placed on the no-fly list earlier that day – despite intelligence information gathered prior to the flight suggesting that he or she potentially posed a security threat prompted reviews of the intelligence analysis and terrorist watch listing processes. Following the “Times Square Bomber” snafu, TSA modified its security directives to require airlines to check passenger names against the no-fly list within two hours of being electronically notified of an urgent update instead of allowing 24 hours to recheck the list.

This incident also prompted calls to speed up the then-ongoing transfer of watch list checks from the airlines to the TSA under the Secure Flight program – a process which has now been completed. By the end of November 2010, DHS announced that 100 percent of passengers flying to or from U.S. airports are being vetted using the Secure Flight system. Secure Flight continues the no-fly and selectee list practices of vetting passenger name records against a subset of the Terrorist Screening Database (TSDB). This has been criticized because they do not check each passenger against the full set of available government data on potential terrorist threats.

Recently there have been renewed efforts to establish a trusted traveler program, intended to offer participants expedited screening. TSA asserts that the program would allow it to focus resources on passengers more likely to pose a risk. A similar test program called the Registered Traveler program – which involved private vendors that issued scanned participants’ biometric credentials – was scrapped because it failed to show a demonstrable additional security benefit. The planned trusted traveler program aims to build upon existing Customs and Border Protection (CBP) trusted traveler programs and airline frequent flyer programs.

## DEFENSE AND HOMELAND SECURITY LEGISLATION IN THE 112TH CONGRESS

In the 112th congress, the House of Representatives has undertaken the difficult task of passing legislation that balances the intelligence and resource needs of the U.S. military, national defense and homeland security with the need to protect constitutionally guaranteed civil liberties and reduce federal spending and reign in the deficit.

### PATRIOT Act Extension

After the terrorist attacks of Sept. 11, 2001, Congress and the Bush Administration quickly determined that the legal tools available to investigators to fight terrorists and spies were inadequate. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act, passed unanimously by the House of Representatives in October of 2001, provided critical additional tools to intelligence and law enforcement officials in counterterrorism and counterespionage investigations. It also implemented reforms to facilitate better information sharing between the intelligence and law enforcement communities. Many of the results have been clear and demonstrable. The PATRIOT Act is controversial for many. To supporters, we are simply providing federal agents the available tools they need to root out terrorism and protect America. Civil libertarians, however, are concerned for the potential for domestic spying and the threat of a slippery slope of “big brother” government.

***Editor’s Note:** For more information regarding terrorism, terrorist networks and nations of concern, please refer to the Foreign Affairs and International Concerns chapter for the 2012 NRCC Issues Book.*

The 1978 Foreign Intelligence Surveillance Act (FISA) provides a framework by which government agencies obtain authorization to conduct electronic surveillance or physical searches in foreign intelligence matters. Before the PATRIOT Act, law enforcement tools were crafted for rotary telephones – not email, the Internet, mobile communications or voicemail. The idea behind the PATRIOT Act was to evolve the law as technology had grown. It allowed the Department of Justice (DOJ) and DHS to use the same tools available to combat mobsters and drug dealers on terrorists and it helps law enforcement and intelligence professionals “connect the dots” and save innocent lives.

On Feb. 25, 2010, the House passed a one-year reauthorization of several expiring provisions of the PATRIOT Act via H.R. 3961, the Medicare Physician Payment Reform Act of 2009 (P.L. 111-141). You can see how they voted [here](#). The three provisions that were extended by this law in 2010 were set to expire at the end of February 2011. Following several failed attempts to pass an extension of these three provisions in the House, an agreement was finally reached between the House and Senate on legislation to do so. Therefore, on May 26, 2011 (with the provisions set to expire the next day on May 27, 2011), the House took up a Senate bill to extend the three provisions for four years and it was signed into law by President Obama the same day.

The three provisions below are what were set to expire in 2011:

**Business Records / “Library” Provision (Section 215 of the PATRIOT Act):** This provision allows the Federal Bureau of Investigation (FBI) to apply to the FISA court for an order granting access to tangible items – including books, records, papers and other documents – in foreign intelligence, international terrorism and clandestine intelligence cases. In order to ensure protection against abuses of Section 215 authority, the PATRIOT Reauthorization Act of 2005 contained several conditions including Congressional

oversight, procedural protections, application requirements and a judicial review process. Several of the 9/11 terrorists used public computers to review their Sept. 11, 2001, plane tickets.

**Roving Wiretaps Provision (Section 206 of the PATRIOT Act):** This provision authorizes FISA court orders for multipoint or “roving” wiretaps for foreign intelligence investigations. A “roving” wiretap applies to an individual and allows the government to use a single wiretap order to cover any communications device that the suspect uses or may use. This type of wiretap differs from a traditional criminal wiretap that only applies to a particular phone or computer used by a target. Without roving wiretap authority, investigators would be forced to seek a new court order each time they need to change the location, phone or computer that needs to be monitored. Terrorists and foreign spies use multiple communications devices to evade detection.

**“Lone Wolf” Provision (Section 6001 of Intelligence Reform Act):** This provision amends the definition of “agent of a foreign power” to include individual foreign terrorists who may not be directly affiliated with a foreign power or international terrorist organization. This provision prevents terrorists who work on their own, like the “Underwear Bomber,” from escaping surveillance simply because they are not agents of a foreign power or avowed members of an international terrorist group. This provision *only* applies to foreign terrorists or agents of a foreign power. Previously, the government needed to establish a clear link between the individual and a specific foreign power in order to classify the individual as an “agent of a foreign power.”

The following is a brief outline of the legislative action leading up to the four-year extension being signed into law in May 2011:

**H.R. 514, FISA Sunsets Extension Act of 2011:** On Feb. 8, 2011, House Republican leadership attempted to use an expedited procedure to pass H.R. 514, the FISA Sunsets Extension Act of 2011, under suspension of the rules. H.R. 514 would have extended the three provisions until Dec. 8, 2011. This procedure requires a two-thirds majority for passage, but Republicans fell seven votes short, 277-148, with 26 Republicans joining 122 Democrats in voting against the measure. You can view this vote [here](#).

On Feb. 14, 2011, the House voted again on the bill, this time under regular House rules and the bill. The bill passed by a vote of 275-144 and was sent to the Senate. You can view this vote [here](#).

The Senate then took the bill under consideration, amending the bill to only extend the expiring provisions of the PATRIOT Act for 90 days, until May 27, 2011. The House passed this version on Feb. 17, 2011, by a vote of 279-143. You can view this vote [here](#). It was signed into law (P.L. 112-3) on Feb. 25, 2011.

**S. 990, Small Business Additional Temporary Extension Act of 2011:** On May 26, 2011, the House took up this Senate-amended bill which contained language to extend the expiring provisions for four years. It passed the House by a vote of 250-153 and was signed into law the same day (P.L. 112-014). You can view this vote [here](#).

### **National Defense Authorization Act (NDAA)**

The piece of legislation that authorizes annual spending amounts for national defense programs is known as the National Defense Authorization Act (NDAA). The NDAA covers funding for procurement, war funding, troop pay and certain programs at the Department of Energy and TRICARE portions of military

medical care. In addition to authorizing funding, the NDAA typically also contains a number of policy riders which specifically authorize or prohibit funds from being used for specific purposes within Defense programs.

**H.R. 1540, Fiscal Year (FY) 2012 NDAA:** On May 26, 2011, the House passed its initial version of the fiscal year (FY) 2012 NDAA, H.R. 1540, by a vote of 322 to 96 (Full vote results can be viewed [here](#)) and passed the conference report reconciling the Senate and House versions on Dec. 14, 2011, by a vote of 283 to 136 (Full vote results can be viewed [here](#)). President Obama signed the conference report into law on Dec. 31, 2011.

The following gives a brief overview of some of the bill's provisions and "highlights":

**Editor's Note:** *For more in-depth information regarding defense authorization and any related policies, please contact the NRCC.*

- authorized a 1.6 percent pay increase for military personnel in FY 2012, and extended certain special pay and bonuses currently in effect for active duty and reserve troops
- allowed for an increase in the out-of-pocket costs for members of the military's TRICARE health care program – an increase that was much less than the increase proposed by the Obama Administration

**Editor's Note:** *For more in-depth information regarding out-of-pocket costs for military or TRICARE in general, please contact the NRCC.*

- required that terrorism suspects (specifically, anyone affiliated with the 9/11 attacks, al-Qaeda or the Taliban) be held in military custody rather than civilian custody

**Editor's Note:** *For information regarding detainee and, specifically, Guantanamo Bay, Cuba (GITMO) detainee issues, please refer to the GITMO and Detainee Issues section of this chapter.*

- blocked funding for the transfer of Guantanamo Bay detainees to U.S. jails
- authorized new sanctions that target the Central Bank of Iran as a terrorist organization
- allows military chaplains to conduct or refuse to conduct same-sex marriages, according to their preference
- restricted funding in the bill available for training and equipping Pakistani security forces
- fully funded the president's request for updating the national nuclear stockpile, but reduced the funding amount requested by the president for nuclear non-proliferation activities
- eliminated White House-mandated requirements that would require potential defense contractors to first declare their political contributions before applying for business with the DoD

## **Budget Control Act's Automatic Spending Reduction Process and Defense Cuts**

***Editor's Note:** The purpose of this section is to highlight the impact of the Budget Control Act's automatic spending reduction process on spending, particularly defense spending. In order to adequately convey that information, it is necessary to provide at least some explanation of the related budget processes as a whole. But, for more detailed information regarding the budget process and terminology associated with this issue, as well as the Budget Control Act and the Republican plan to replace the sequester, please refer to the Budget and Federal Spending chapter of the 2012 NRCC Issues Book.*

### **Budget Control Act of 2011 (BCA)**

Last August, following a months-long debt limit standoff, the House passed S. 365, the Budget Control Act of 2011 (BCA), on Aug. 1, 2011. You can see how they voted [here](#). The Senate passed it on Aug. 2, 2011, and President Obama signed it into law (P.L. 112-25) on the same day.

**Discretionary Spending Caps:** The BCA imposed discretionary spending (money that is spent by the federal government through the appropriations process) caps for the next 10 years from FY 2012 through FY 2021. The CBO estimated that these discretionary caps under the BCA would reduce federal spending by \$917 billion from FY 2012 to FY 2021. Effectively exempt from these caps, under the BCA, are:

- Emergency appropriations;
- Overseas Contingency Operations (OCO)/Global War on Terrorism (such as for military activities in Afghanistan) appropriations;
- Appropriations for controlling health care fraud and abuse; and
- Disaster relief appropriations.

Between FY 2012 and FY 2013, two separate caps under these discretionary spending caps, per the BCA, exist on security and non-security spending. Security spending is defined by the BCA as discretionary appropriations associated with agency budgets for the following:

- Department of Defense (DOD);
- Department of Homeland Security (DHS);
- Department of Veterans Affairs (VA);
- National Nuclear Security Administration (NNSA);
- Intelligence community management account; and
- All budget accounts in the budget function for international affairs (Function 150).

Non-security spending consists of discretionary spending outside this security category. The largest amounts of spending in the non-security category are tied to the Departments of Health and Human Services (HHS), Education and Housing and Urban Development (HUD).

For FY 2014 through FY 2021, these shift to just a single category which simply includes all discretionary spending in all budget accounts (**Figure 2**). The authority to determine what specific programs and what specific appropriations bills will be funded at what level or cut by what amount is reserved for Congress and the federal budget and appropriations processes. For example, the BCA set a FY 2013 discretionary spending limit of \$1.047 trillion (broken down into \$686 billion for security and \$361 billion for non-security). But, the FY 2013 House budget resolution dropped that spending limit for FY 2013 down by approximately \$19 billion to a new cap of \$1.028 trillion.

<b>Fiscal Year</b>	<b>Discretionary Spending Limits (in billions of budget authority)</b>
<b>2012</b>	\$684 (security)
	\$359 (non-security)
<b>2013</b>	\$686 (security)
	\$361 (non-security)
<b>2014</b>	\$1,066
<b>2015</b>	\$1,086
<b>2016</b>	\$1,107
<b>2017</b>	\$1,131
<b>2018</b>	\$1,156
<b>2019</b>	\$1,182
<b>2020</b>	\$1,208
<b>2021</b>	\$1,234

**Automatic Spending Reduction Process:** In addition to the deficit reduction achieved through the discretionary spending caps discussed above, the BCA also created a 12-member, bipartisan Joint Select Committee on Deficit Reduction (Joint Committee) tasked with proposing legislation that would reduce the deficit by at least \$1.5 trillion over 10 years (from FY 2012 to FY 2021). In short, the Joint Committee failed to propose any legislation and, thus, per the BCA, an automatic spending reduction process to cut **both discretionary and mandatory spending** was triggered.

The total amount of spending reduction to result from this process is \$1.2 trillion. This process involves several steps and calculations. Very generally, the spending reductions are to be made equally from the two defense spending and from all other spending (referred to as non-defense spending) categories. The reductions required in each of these categories are then divided proportionately between discretionary spending and mandatory spending. **Cuts to discretionary programs as a result of the automatic spending reduction process would be in addition to the cuts resulting from the BCA discretionary spending caps already in effect.**

The automatic spending reduction process cuts are achieved for mandatory spending through sequestration each year (FY 2013 to FY 2021). Mandatory spending is federal spending not subject to the appropriations process. There are numerous mandatory programs and activities of the federal government that are exempt from sequestration under current law. Among these are:

**Editor’s Note:** *This is not the complete list of programs and activities exempt by law from sequestration – it is a very long list of dozens and dozens of programs and activities. Please refer to the Budget and Federal Spending chapter of the 2012 NRCC Issues Book for the complete list.*

- Social Security benefits and Tier 1 Railroad Retirement benefits
- All VA programs
- Supplemental Nutrition Assistance Program (SNAP, or food stamps)

- Supplemental Security Income Program (SSI)
- Temporary Assistance for Needy Families (TANF)
- Medicare Part D premium and cost-sharing subsidies; Medicare Part D catastrophic subsidy payments; and Qualified Individual (QI) premiums – **the rest of Medicare is not exempt**
- Pell Grants
- Medicaid
- Children’s Health Insurance Program (CHIP)
- GSE Preferred Stock Purchase Agreements (essentially, the Fannie Mae and Freddie Mac 2008 “bailout”)
- Special Inspector General for the Troubled Asset Relief Program (SIGTARP)
- Payments to individuals in the form of refundable tax credits
- Unobligated balances carried over from previous years for non-defense programs

For discretionary spending, the reductions are achieved through sequestration the first year (FY 2013). For the other fiscal years (FY 2014 to FY 2021), the discretionary spending reductions are achieved through a downward adjustment of caps on discretionary spending divided into two new categories that reflect defense and non-defense spending. The previously set discretionary spending limits for FY 2013 to FY 2021 are first revised to redefine the security and non-security categories by basically dividing the original discretionary spending limits between defense and all non-defense accounts. In contrast to the original discretionary limits, the security category is revised to include discretionary appropriations classified as budget Function 50 (National Defense) only (as opposed to DoD, DHS, VA, NNSA, international affairs programs and intelligence functions **all** being lumped together under the current discretionary caps for FY 2012 and FY 2013).

The programs in the National Defense function include, but are not limited to:

- the pay and benefits of active, Guard and reserve military personnel;
- DoD operations including training, maintenance of equipment, and facilities;
- health care for military personnel and dependents;
- procurement of weapons;
- research and development;
- construction of military facilities, including housing;

- research on nuclear weapons; and
- the cleanup of nuclear weapons facilities.

The non-security category, now considered “non-defense,” would be revised to include all other discretionary appropriations – the other discretionary appropriations not in budget Function 50 (National Defense) included in the original security category are essentially transferred to this revised non-security/non-defense category. There are 19 other budget function categories in addition to Function 50. For descriptions of each of these Budget Functions, click [here](#).

By setting annual limits for the revised categories through FY 2021, the revised limits extend the “firewall” between different spending categories beyond the original two-year firewalls (for FY 2012 and FY 2013). Both changes to the discretionary spending limits presumably facilitate the equal split of the required spending reduction between defense and nondefense accounts over the nine years through FY 2021, as required in the next steps.

Next, the Office of Management and Budget (OMB) is required to calculate the amount of deficit reduction required each year to achieve the total amount of \$1.2 trillion. This calculation provides the amount of spending reductions required from each of the two categories of defense and non-defense for each fiscal year covering FY 2013 to FY 2021.

Finally, the required spending reductions are achieved each year – FY 2013 to FY 2021 – through a combination of a sequestration process and the downward adjustment of the discretionary spending caps. Specifically, the reductions required are implemented in three parts:

- 1) for discretionary spending for FY 2013, a sequestration (across-the-board cut) of budgetary resources in that year
- 2) for discretionary spending for FY 2014-FY 2021, a downward adjustment of the revised discretionary spending caps; and
- 3) for nonexempt mandatory spending, sequestration in each year from FY 2013 through FY 2021.

The table below, courtesy of the Congressional Research Service (CRS) and CBO, shows the expected cuts in dollars, the percentage reduction of each category and the defense and non-defense cap levels after the \$1.2 trillion automatic spending reduction (based on current projections):

**Table 3. \$1.2 Trillion Automatic Spending Reduction by Major Category**  
(Budget Authority, FY2013 to FY2021)

	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021
<b>Amount of Reduction in Billions of Dollars</b>									
Defense Reduction*	\$55	\$55	\$55	\$55	\$55	\$55	\$55	\$55	\$55
Non-Defense Reduction	\$55	\$55	\$55	\$55	\$55	\$55	\$55	\$55	\$55
Medicare (Mandatory)	\$11	\$11	\$12	\$13	\$13	\$14	\$15	\$16	\$17
Other Non-Exempt Mandatory	\$5	\$5	\$6	\$6	\$5	\$5	\$5	\$5	\$5
Discretionary	\$39	\$38	\$37	\$36	\$36	\$36	\$34	\$33	\$33
<b>Percentage Reduction</b>									
Defense Reduction	10.0%	9.8%	9.7%	9.5%	9.3%	9.1%	8.9%	8.7%	8.5%
Non-Defense Reduction									
Medicare (Mandatory)	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%
Other Non-Exempt Mandatory	7.8%	7.4%	7.1%	6.8%	6.6%	6.4%	6.1%	5.8%	5.5%
Discretionary	7.8%	7.4%	7.1%	6.8%	6.6%	6.4%	6.1%	5.8%	5.5%
<b>Projected Discretionary Cap Levels in Billions of Dollars Under \$1.2 Trillion Reduction</b>									
Defense	\$491	\$501	\$511	\$522	\$535	\$548	\$561	\$575	\$589
Non-Defense	\$462	\$472	\$483	\$494	\$505	\$517	\$532	\$545	\$557

**Impact of the FY 2013 Sequestration on Defense:** The House Armed Services Committee (HASC) has analyzed the impact of the sequestration, and found that if left in place, sequestration would cut the military to its smallest size since before World War II – all while we are still a nation at war in Afghanistan, facing increased threats from Iran and North Korea, unrest in the Middle East and a rising China. Major consequences, according to HASC, include:

- 200,000 soldiers and Marines separated from service, bring our force well below our pre-9/11 levels;
- Ability to respond to contingencies in North Korea or Iran at jeopardy;
- The smallest ground force since 1940;
- A fleet of fewer than 230 ships, the smallest level since 1915;
- The smallest tactical fighter force in the history of the Air Force;
- Our nuclear triad that has kept the U.S. and 30 of our allies safe for decades will be in jeopardy;
- Reductions of 20 percent in defense civilian personnel; and
- Two BRAC rounds of base closings.

Additionally, Defense Secretary Leon Panetta said in a Nov. 14, 2011, letter to Senator John McCain (R-Ariz.), “If the maximum sequestration is triggered, the total cut will rise to about \$1 trillion compared with the FY 2012 plan. The impacts of these cuts would be devastating for the Department...Facing such large reductions, we would have to reduce the size of the military sharply. Rough estimates suggest after ten years of these cuts, we would have the smallest ground force since 1940, the smallest number of ships since 1915, and the smallest Air Force in its history.”

Also, according to an analysis by the House Appropriations Committee, the sequester could also have a significant impact on nondefense discretionary programs, including:

- Automatically reducing Head Start by \$650 million, resulting in 75,000 fewer slots for children in the program;
- Automatically reducing the NIH by \$2.4 billion, an amount equal to nearly half of total NIH spending on cancer this year; and
- A reduction of approximately 1,870 Border Patrol Agents (a reduction of nearly nine percent of the total number of agents).

**House Republican Plan to Replace the FY 2013 Sequester:** On March 29, 2012, the House passed H. Con. Res. 112, the FY 2013 budget resolution, which contained reconciliation instructions to cancel the \$98 billion sequester of discretionary funding set for January 2013, protect defense spending and replace the automatic cuts with other savings.

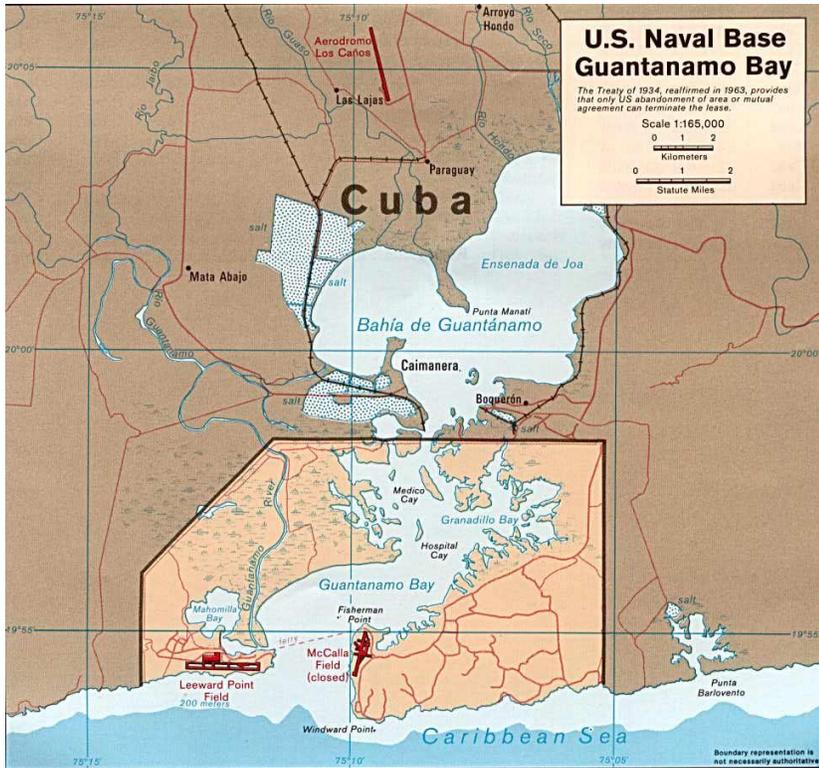
The six House committees required by the budget resolution to report deficit reduction reconciliation legislation include: Agriculture, Energy and Commerce, Financial Services, Judiciary, Oversight and Government Reform and Ways and Means committees.

On May 10, 2012, the House passed H.R. 5652, the Sequester Replacement Reconciliation Act, by a vote of 218 to 199. The full vote results can be found [here](#). H.R. 5652 would cancel the sequestration of discretionary spending currently scheduled to occur in January 2013, while replacing that \$98 billion discretionary sequester in FY 2013 with a \$19 billion reduction in the discretionary spending cap for FY 2013 and savings from mandatory programs that would, if enacted by July 1, total \$19.7 billion through FY 2013 and \$315.1 billion through FY 2022. The bill would also eliminate the BCA's separate caps on defense and non-defense spending for FY 2013 to allow for higher levels of defense spending that year. **It would leave intact the scheduled January 2013 mandatory spending sequester as well as the scheduled sequestration of both discretionary and mandatory spending in future years to achieve the cumulative \$1.2 trillion in deficit reduction required by the BCA.**

For more information regarding the Republican sequester replacement proposals and the effect that sequestration would have on defense, please refer to the following links:

- Reconciliation Submissions by Committee, House Budget Committee - <http://budget.house.gov/BudgetAnalysis/Reconciliation.htm>
- Charge and Response – Replacing Dangerous Defense Cuts with Common Sense Spending Reductions, House Republican Conference - <http://www.gop.gov/policy-news/12/05/07/charge-and-response-replacing-dangerous>
- Reeling in Government Waste, Fraud and Abuse, House Republican Conference - <http://www.gop.gov/policy-news/12/05/07/reeling-in-government-waste>
- Responsibly Reprioritizing Sequester Savings, House Budget Committee - <http://budget.house.gov/Reconciliation/>

- Q&A on Reprioritizing Sequester Savings, House Budget Committee - <http://budget.house.gov/Reconciliation/QASequesterSavings.htm>



## GITMO AND DETAINEE ISSUES

### Guantanamo Bay, Cuba and GITMO

Although the United States does not have official diplomatic relations with the current Cuban government, the U.S. Navy has operated a base in Guantanamo Bay, Cuba, for more than a century. The U.S. Naval Station Guantanamo Bay (GITMO) is located in the Oriente Province on the southeast corner of Cuba. The base is about 400 air miles from Miami, Fla. and has a unique posture in the Western Hemisphere in that it is the oldest U.S. naval station outside the continental United States and the only one in a country that does not enjoy an open political relationship with the

United States.

Since shortly after the terrorist attacks of Sept. 11, 2001, the station has been host to the Guantanamo Bay Detention Camp where the United States government has been incarcerating non-U.S. citizens accused of terrorist acts and making them stand trial before military tribunals.

### Enhanced Interrogation

Perhaps the most criticized aspect of GITMO was the use of evidence obtained through alleged “enhanced techniques” from detainees. There has been much debate over where a line can be drawn between a harsh but legal interrogation and illegal torture. Critics contend that anyone will confess to anything if they are subjected to a sufficient amount of torture. Supporters of the program counter that the techniques used were in no way “torture” and claim that the interrogations yielded significant information that has helped keep Americans safe. The controversy expands to who authorized their use, how much of the decision-making was shared with Congress and what role former President Bush and former Vice-President Dick Cheney had in the decision-making. It incorporates a policy, ethical, legal and political challenge.

Deserved or not, the GITMO detention center has had a public relations problem since its opening in 2002, due to these concerns. While efforts to provide transparency about the facility during the Bush administration were somewhat successful in quelling concerns about the overall care and treatment of detainees at the facility, concerns remained about whether detainees should be held indefinitely without any kind of due process. Furthermore, critics contend that GITMO serves as a lightning rod that damages U.S. credibility in the international community and as a “recruitment tool” or “rallying cry” for terrorists.

## Closing GITMO

Fulfilling a campaign promise, on Jan. 22, 2009, two days into his first term, President Obama issued an Executive Order (which requires no Congressional input) to shut down the GITMO prison within a year and to halt the use of controversial interrogation techniques. Interestingly, President Bush had also called for closing down the GITMO prison himself but had found it difficult due to all of the legal and national security problems laid out above. While he was trying to navigate those waters, the administrations changed and President Obama made his sudden declaration. However, the order presented both a national security and a political problem for the Obama administration and to date the prison remains open and functioning.

During the previous 111th Congress, Republicans argued strongly against closing the facility and repeatedly sought to block any attempt to bring detainees from the prison to the United States for any reason, including prosecution. Feeling the heat from concerned constituents and from Republicans in Congress, many Democrats relented and worked with Republicans to deny funding necessary to close the facility and to bar the transfer of any detainee to American soil. Detainee restrictions were attached to the FY 2009 war supplemental spending bill enacted in June 2009 (P.L. 111-32), and extended the restrictions through FY 2010 by including them in at least three of the annual spending bills: Interior-Environment (P.L. 111-88), Homeland Security (P.L. 111-83) and Commerce-Justice-Science, which was enacted in the omnibus package (P.L. 111-117). Generally, the laws barred the use of funds to release prisoners held at GITMO into the United States or any U.S. territories. Detainees could not be transferred to the U.S. for prosecution or other legal proceedings until 45 days after the president submits a detailed report to Congress that included an assessment of risks that the transfer might pose and what the administration would do to mitigate that risk. The governor of the state where the detainee is headed must also be notified in advance.

However, in November 2009, the U.S. Department of Justice (DOJ) [announced](#) that five GITMO detainees, would be transferred to New York for prosecution for criminal offenses related to the 9/11 terrorist attacks as opposed to facing a military tribunal (one GITMO detainee had already been transferred to the U.S. in June 2009 to face criminal charges related to the bombing of the U.S. embassies in Tanzania and Kenya). Khalid Sheikh Mohammed (KSM), the self-avowed mastermind of the 9/11 attacks, was one of these five detainees. This move was opposed by city officials because of costs, security and logistical concerns. There was also significant opposition in Congress. Then, when the attempted Christmas airline bombing brought massive scrutiny to the Obama Administration's terrorism policies, the Administration said it would review DOJ's trial decision and consider all options for a new location.

In December 2009, President Obama issued a [memorandum](#) directing the acquisition of the Thomson Correctional Center, a maximum-security facility in Thomson, Ill., so that designated GITMO detainees could be transferred there for continued detention. Both Members of Congress and citizens are wary of potentially dire consequences of moving detainees to U.S. prisons or other facilities such as military bases on American soil. Moving GITMO detainees [anywhere](#) has raised concerns that some of those held may be released, repatriated to their native land or transferred to third countries, leaving open the possibility of a return to the battlefield or to terrorist activities. In fact, the Office of the Director of National Intelligence (ODNI) [estimated](#) in September 2011, that 27 percent of the 600 former detainees who have left GITMO were confirmed or suspected to be presently or previously reengaged in terrorist or insurgent activities.

The President tried, and failed, to overcome objections by Republicans and some of his fellow Democrats in Congress to transferring some of the detainees held at the facility to U.S. prisons and trying Khalid Sheikh

Mohammed, mastermind of the September 11 attacks, and others in federal civilian courts. The administration has also struggled to convince other countries to accept detainees.

Closing GITMO will not relieve the United States from needing a facility to house and interrogate suspected terrorists. While holding detainees indefinitely is not likely, releasing them now is not a realistic option. Both Members of Congress and citizens are wary of potentially dire consequences of moving detainees to U.S. prisons or other facilities such as military bases on American soil.

On March 7, 2011, President Obama issued an Executive Order that lifted a two-year freeze on new military trials at GITMO. This Executive Order formally cleared the way for new military trials at GITMO, lifting a ban the White House put in place two years prior as the initial step in a planned – but unsuccessful – effort to fulfill a 2008 campaign promise and close the facility.

A copy of this Executive Order can be found [here](#).

### **Detainee and Detention Authority Issues**

A long-standing debate has raged as to whether the detainees held at GITMO, and individuals detained following being captured in connection with hostilities that are not specifically held at GITMO, are entitled to the same legal rights as those afforded to Americans, rather than being tried by military commissions. One of the primary reasons the Bush Administration chose GITMO as a place to create the terrorist detention center was that it was not on U.S. soil for that very reason, (in addition to the fact that the terrorists are isolated and away from any U.S. citizens that they wish to harm).

During the debate and following the enactment of the FY 2012 NDAA, quite a bit of attention focused on its detainee provisions. The FY 2012 NDAA contains provisions addressing issues related to both detainees at the U.S. Naval Station at Guantanamo Bay, Cuba (GITMO) and the detention of other individuals captured in connection with hostilities. More specifically, the concern lies primarily with how this detention authority applies to U.S. citizens and other persons within the United States. Even beyond simple concern, some have claimed, on **both** sides of the aisle, that the FY 2012 NDAA created or expanded federal authority to detain U.S. citizens indefinitely and without due process. This is not an accurate assessment of the detainee provisions.

The 2012 NDAA is explicit in two places that it does not extend new authority to detain U.S. citizens. Section 1021 states, “Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.”

Section 1022, which deals with military custody for foreign terrorists, states, “The requirement to detain a person in military custody does not extend to citizens of the United States.”

In addition to these concerns, proposed transfers of GITMO detainees to the United States for detainment and/or prosecution have also garnered particular attention. Due to these proposals, legislative language was included in several appropriations bills during the 111th Congress to restrict and prohibit the potential transfer of any GITMO detainees into the United States. The FY 2012 NDAA includes continuations of transfer restrictions from prior legislation.

Several conservative groups and “think tanks,” like The Heritage Foundation for one, who initially came out against the NDAA’s detainee provisions later reversed their concerns. The Heritage Foundation has even gone so far as to state that the claims made by some that the NDAA bill creates or expands federal authority to detain U.S. citizens indefinitely and without due process are false. To read Heritage’s WebMemo on this subject, please click [here](#).

## **Detention Authority Background**

**The Law of War:** The law of war divides people in the midst of an armed conflict into two broad categories: combatants and civilians. Combatants are authorized by international law to fight in accordance with the law of war on behalf of a party (typically, a nation or state) to the conflict. Civilians are not authorized to fight, but are protected from deliberate targeting by combatants as long as they do not take up arms.

**Geneva Conventions of 1949:** The treatment of those who fall into the hands of the enemy during an international armed conflict depends upon their status (civilian or combatant) as determined by the four Geneva Conventions of 1949. Under these Conventions, nations in an international armed conflict have the right to capture and detain enemy soldiers as well as civilians who pose danger to national security, at least for the duration of hostilities. This right is not based on any assumption that they are “guilty” of any crimes or are even suspected of having committed a crime. Both are detained for security purposes – soldiers, to remove them as a threat on the battlefield, and civilians, in order to prevent their acting on behalf of the enemy and to deprive the enemy of resources it might use in its war efforts. Enemy soldiers and civilians may be punished for crimes committed prior to their capture as well as during captivity, but only after a fair trial in accordance with the relevant Convention and other applicable international law.

Non-international armed conflict is specifically governed by Common Article 3 of the Geneva Conventions and Additional Protocol II (the U.S. has not ratified Additional Protocol II). Common Article 3 does not recognize any distinction between combatant and civilian status, and neither expressly permits nor prohibits detention. Instead, it provides minimal protections for those who may fall into the hands of one of the parties to an armed conflict (i.e. no violence, humiliating or degrading treatment, etc.). There is some disagreement among international legal scholars as to whether or not and to what extent detention is allowed in non-international conflicts. Some believe that detention is allowed in non-international conflicts similar to what is allowed in international armed conflicts, while others believe that specific authority under domestic law is necessary to authorize and define the scope of permissible detention during a non-international armed conflict. U.S. history shows that persons considered likely to act as an enemy agent on U.S. territory traditionally have been treated as alien enemies rather than prisoners of war or “enemy combatants” by the military, even when they were members of the armed forces of enemy nations. But, enemy soldiers might also be tried by military commission or court-martial, if accused of a crime. Those acting within the U.S. on behalf of an enemy government who are not part of its armed forces, including American citizens accused of spying or sabotage, have been tried in federal court. Those captured on the battlefield abroad have been handled in accordance with government regulations interpreting the law of war.

**The Authorization to Use Military Force (AUMF):** Following the terrorist attacks of 9/11, Congress passed the Authorization to Use Military Force (AUMF), which granted the president the authority, “...to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on Sept. 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”

Since its enactment, the AUMF has been the primary legal basis supporting the detention of those captured in the conflict with Al Qaeda and affiliated entities. Although the AUMF does not specifically say “detain” or “detention,” both the Bush and Obama Administrations, and the courts, have all interpreted the AUMF to include the ability to detain the enemy for the duration of hostilities. Both the Obama and Bush Administration’s definition of its scope of detention authority are similar. The Obama Administration framed its detention authority, only different from the Bush Administration’s in that it requires “substantial support,” rather than just “support,” under the AUMF in a March 13, 2009, court brief as follows: “The President has the authority to detain persons that the President determines planned, authorized, committed, or aided the terrorist attacks that occurred on Sept. 11, 2001, and persons who harbored those responsible for those attacks. The President also has the authority to detain persons who were part of, or substantially supported, Taliban or al-Qaida forces or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy armed forces.”

Since the enactment of the AUMF, most subsequent judicial activity concerning U.S. detention policy has occurred in the D.C. Circuit, where courts have considered numerous habeas petitions by GITMO detainees challenging the legality of their detention. These rulings have generally been favorable to the government’s position regarding the scope of its detention authority under the AUMF.

Regarding the jurisdiction of military commissions for guidance as to who may be subject to military detention, the D.C. Circuit has looked to the Military Commissions Acts of 2006 and 2009 (MCA), for guidance. In 2010, the circuit court concluded that the government had authority under the AUMF to detain militarily persons (specifically, those who are “part of forces associated with Al Qaeda or the Taliban,” along with “those who purposefully and materially support such forces in hostilities against U.S. Coalition partners”) subject to the jurisdiction of military commissions established under the MCAs. It is important to note that the MCA only applies to “alien unprivileged enemy belligerents.” The MCA does not allow for the prosecution of U.S. citizens by military commission because “aliens” means non-citizens.

In almost all instances, anyone arrested in the United States who has been suspected of terrorist activity on behalf of Al Qaeda or affiliated groups has not been placed in military detention pursuant to the AUMF, but instead has been prosecuted in federal court for criminal activity. There were two instances in which the Bush Administration transferred people arrested in the U.S. into military custody and designated them as “enemy combatants” – one a U.S. citizen initially arrested by law enforcement upon his return from Afghanistan, where he had allegedly been part of Taliban forces, and the other a legal permanent resident alien, who had never been to the Afghanistan zone of combat, but was alleged to have been an Al Qaeda “sleeper agent” planning to engage in terrorist activities on behalf of Al Qaeda within the United States. But, in both cases, they were ultimately transferred back to the custody of civil authorities and tried in federal court when it appeared that the Supreme Court would hear their habeas petitions. To date, there have only been six convictions by military commissions, four of which were procured by plea agreement, while many others have been tried for terrorism-related crimes in civilian court.

In June 2004, the Supreme Court handed down a series of opinions related to wartime detention authority. In the case of *Hamdi v. Rumsfeld*, the Supreme Court verified that the AUMF provides authority for the military to detain enemy combatants (including U.S. citizens) captured overseas on the battlefield in Afghanistan on U.S. soil until the end of hostilities. In addition to this, the Court also explicitly decided that the right to challenge their detention under the writ of habeas corpus remained available to every individual

detained within the United States. Not only was this right available to both citizens and non-citizens held in the United States, but it was also extended to foreign detainees held at GITMO.

### **FY 2012 NDAA Detainee Provisions**

The 2012 NDAA, as enacted, largely adopted the detention provisions from the Senate version, S. 1867, with several modified versions from the House version, H.R. 1540. During Floor debate on S. 1867, attention was focused on the extent to which the bill and existing law permit the military detention of U.S. citizens believed to be enemy belligerents, especially if arrested in the United States. During Senate consideration, a single amendment was made to the detainee provisions to clarify that the bill's affirmation of detention authority under the AUMF is not intended to affect any existing authorities relating to the detention of U.S. citizens or lawful resident aliens, or any others captured or arrested in the United States. Even further, when signing the NDAA into law, President Obama said that he would "not authorize the indefinite military detention without trial of American citizens." Until enactment of the detainee provisions in the 2012 NDAA, Congress did not expressly clarify the scope of detention authority under the AUMF.

#### Detention Authority

**Section 1021:** This section of the FY 2012 NDAA affirms that the AUMF includes authority for the U.S. Armed Forces to detain "covered persons" pending disposition under the law of war. Combining the express language of the AUMF with the language the Obama Administration has employed to describe its detention authority in habeas litigation involving GITMO detainees, Section 1021 defines "covered persons" as:

- 1) A person who planned, authorized, committed or aided the terrorist attacks that occurred on Sept. 11, 2001, or harbored those responsible for those attacks.
- 2) A person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.

Section 1021 states that dispositions under the law of war "may include" several options:

- detention without trial until the end of hostilities authorized by the 2001 AUMF;
- trial by military commission;
- transfer for trial by another court or tribunal with jurisdiction;
- transfer to the custody or control of a foreign country or foreign entity

In affirming the detention authority under the AUMF, Section 1021 does not expressly clarify whether U.S. citizens or lawful resident aliens may be determined to be "covered persons." This issue was the subject of significant floor debate. An amendment offered by Senator Diane Feinstein (D-Calif.), S. Amdt. 1126, would have expressly barred U.S. citizens from long-term military detention on account of enemy belligerent status. But it was considered by the Senate and was rejected by a vote of 45-55.

Ultimately, another Feinstein amendment, S. Amdt. 1456, was adopted by a vote of 99-1, which added the following to Section 1021: “Nothing in this section shall be construed to affect existing law or authority relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.”

Additional language was also included stating that nothing “is intended to limit or expand the authority of the President or the scope of the Authorization for the Use of Military Force,” making it clear that Section 1021 was not intended to either expand or limit the executive’s existing authority to detain U.S. citizens and resident aliens, as well as others captured in the U.S. Consequently, if the executive branch decides to hold such a person under the detention authority affirmed in Section 1021, it is left to the courts to decide whether Congress meant to authorize such detention when it enacted the AUMF in 2001.

When signing the 2012 NDAA into law, President Obama, in his Presidential Signing Statement, said that Section 1021 “breaks no new ground and is unnecessary,” as it “solely codifies established authorities” – namely, detention authority conferred by the AUMF, as interpreted by the Supreme Court and lower court decisions.

### Mandatory Military Detention

**Section 1022:** This section of the 2012 NDAA seems to have evoked the most resistance from the Obama Administration. It generally requires at least temporary military custody for certain Al Qaeda members and members of certain “associated forces” who are taken into the custody or brought under the control of the United States. This particular provision does not apply to all of the same “covered persons” as in Section 1021 – Section 1022 only applies to those captured during the course of hostilities who meet certain criteria. Specifically, Section 1022’s mandatory detention requirement applies to “covered persons” captured in the course of hostilities authorized by the AUMF who is determined:

- 1) to be a member of, or part of, al-Qaeda or an associated force that acts in coordination with or pursuant to the direction of al-Qaeda; and
- 2) to have participated in the course of planning or carrying out an attack or attempted attack against the United States or its coalition partners.

It also expressly excludes U.S. citizens, although it applies to U.S. resident aliens. Section 1022 states, “The requirement to detain a person in military custody does not extend to citizens of the United States.”

When signing the 2012 NDAA into law, President Obama expressed strong disapproval of Section 1022 and described it as “ill-conceived and... [doing] nothing to improve the security of the United States.” But, President Obama also characterized Section 1022 as providing “the minimally acceptable amount of flexibility to protect national security,” and claimed that he would interpret and apply it so as to best preserve executive discretion when determining the appropriate means for dealing with a suspected terrorist in U.S. custody.

### Transfer or Release of Wartime Detainees into the United States

There are several other sections of the 2012 NDAA dealing with various other detainee matters, but the others of actual note deal with restrictions on transferring or releasing detainees into the United States.

Proposals to transfer some GITMO detainees to the United States for prosecution or continued detention have been a subject of considerable interest for Congress as well as the public.

**Section 1026:** While not directly limiting the transfer or release of detainees into the United States, Section 1026 prohibits the use of any Department of Defense (DOD) funds for FY 2012 to construct or modify any facility in the U.S., its territories or possessions to house any GITMO detainees. Very similar restrictions were also included in the 2012 Minibus (PL 112-55) and the 2012 Consolidated Appropriations Act (CAA) (PL 112-74).

**Section 1027:** This section prohibits the use of DOD funds for FY 2012 from being used to transfer or assist in the transfer of detainees from GITMO into the United States. This language was whittled down from its much broader version in the original House NDAA bill which would have limited the transfer or release into the U.S. of **any non-citizen detainees held abroad in U.S. military custody** (not just GITMO detainees).

Section 1027 is a continuation of transfer restrictions from legislation in the 111th Congress outlined above. This language differs in that the prior measures barred detainees from being released into the United States, but still preserved executive discretion to transfer detainees into the country for purposes of criminal prosecution. This more recent language, including that found in the 2012 Minibus and CAA, prohibits the transfer of GITMO detainees into the United States for **any purpose**, including criminal prosecution. Since there are no civilian courts that operate at GITMO, this enacted language appears to have effectively made military commissions the only viable forum for the criminal prosecution of GITMO detainees (at least until the end of FY 2012).

The Obama Administration openly opposed the House-passed language (as mentioned above) which barred the transfer of all non-citizen detainees held abroad in U.S. military custody. But, the changes made during conference on the bill which limited the ban to only GITMO detainees, as previous legislation had done, rather than all detainees in military custody abroad was sufficient to overcome the Administration's previous veto threat of the 2012 NDAA.

### **Importance of the FY 2012 NDAA Detainee Language**

Consistent with the Obama and Bush Administration interpretations of the 2001 AUMF, the FY 2012 NDAA affirmed that the military has the authority to detain individuals who are part of or substantially supporting al-Qaeda, the Taliban and associated forces. Over the past ten years since the horrific attacks of 9/11, the enemy has evolved as a result of intense military and diplomatic pressure from the United States and its coalition partners. Counterterrorism experts now say that al Qaeda in the Arabian Peninsula (AQAP) in Yemen poses the gravest threat to the U.S. homeland. With the death of Osama bin Laden and the Obama Administration's desire to withdraw from Afghanistan, the courts could begin to erode the military's authority. Our men and women in uniform deserve to be on solid legal footing when detaining terrorists who seek to harm the United States.

## **TRICARE**

### **What is TRICARE?**

Since 1966, civilian care to millions of dependents and retirees (and retirees' dependents) has been provided through a program still known in law as the Civilian Health and Medical Program of the Uniformed Services, or CHAMPUS, but more commonly known as TRICARE. TRICARE services active duty service members, National Guard and Reserve members, retirees, their families, survivors and certain former spouses. TRICARE currently serves approximately 9.7 million beneficiaries worldwide.

As a major component of the Military Health System, TRICARE brings together the health care resources of the uniformed services and supplements them with networks of civilian health care professionals, institutions, pharmacies and suppliers to provide access to high-quality health care services while maintaining the capability to support military operations. TRICARE is administered on a regional basis by the TRICARE Management Activity (TMA), which uses a regional managed care support contractor to develop networks of civilian providers and process beneficiary claims in each of its North, South and West regions.

TRICARE beneficiaries can obtain prescription drugs through a pharmacy system that includes military treatment facilities (MTFs) pharmacies, network retail pharmacies, non-network retail pharmacies and the TRICARE Mail Order Program (TMOP).

**Active duty service members receive medical care at no cost.** Other beneficiaries pay differing amounts depending on their status, the TRICARE option enrolled in and where they receive care.

TRICARE has four main benefit plans: TRICARE Prime, TRICARE Extra, TRICARE Standard and TRICARE for Life (TFL). TRICARE's three basic options for non-Medicare eligible beneficiaries are:

**TRICARE Prime:** TRICARE Prime is the “centerpiece” of TRICARE and relies primarily upon military providers and treatment facilities. It is a DOD version of a health maintenance organization (HMO) that the beneficiary joins and which provides essentially all of his or her medical care. Care is provided through DOD medical personnel, hospitals and clinics, as well as affiliated civilian physicians, hospitals and other providers. Costs are contained through administrative controls and treatment protocols. In civilian practice, HMOs have been credited with some success in reducing costs, although opponents of these systems complain about restrictions on provider choice and incentives that may be created to constrain the delivery of services. Dependents of active duty personnel and retirees and dependents under age 65 can choose to enroll in TRICARE Prime. Or, if they choose not to enroll in TRICARE Prime, they can obtain care through TRICARE Standard or TRICARE Extra.

**TRICARE Standard:** TRICARE Standard is a fee-for-service option and has been the military equivalent of a health insurance plan, run by DOD, for active duty dependents, military retirees and the dependents of retirees, survivors of deceased members and certain former spouses. But, unlike private insurance plans, TRICARE Standard does not require premiums. If care at a military facility cannot be provided (due to space limitations, limitations on types of services that a facility is capable of providing or due to the fact that a beneficiary may not live close enough to a military facility to make such travel reasonable), TRICARE Standard will share responsibility with the beneficiary for the payment of care received from non-military health care providers, subject to regulations. Certain types of care, such as most dentistry and chiropractic services, are excluded.

**TRICARE Extra:** TRICARE Extra is a preferred-provider option in which beneficiaries do not enroll or pay annual premiums, but use physicians and specialists in the TRICARE network and are charged five percent less for medical services.

Individuals who are eligible for Medicare and otherwise eligible for TRICARE may enroll in Medicare Part B and receive “wrap-around” TRICARE coverage through the TRICARE for Life (TFL) program, which covers costs not paid by Medicare that would otherwise be incurred by the beneficiary:

**TRICARE for Life (TFL):** Many of the changes made in the past decade to the military health system have been intended to improve medical care available to the active duty population, but they have also resulted in less medical care available in military facilities for retired personnel and their dependents. The introduction of TRICARE for Life (TFL) in FY 2002 provided coverage for retired beneficiaries, but most of their care will undoubtedly be obtained from civilian providers reimbursed by Medicare and TRICARE.

### **DOD TRICARE Priorities**

Since the establishment of TRICARE and pursuant to the Defense Authorization act of fiscal year (FY) 1996 (P.L. 104-106), DOD has established the following basic priorities (with certain special provisions):

- Priority 1: Active-duty service members;
- Priority 2: Active-duty family members who are enrolled in TRICARE Prime;
- Priority 3: Retirees, their family members and survivors who are enrolled in TRICARE Prime;
- Priority 4: Active-duty family members who are not enrolled in TRICARE Prime;
- Priority 5: All other eligible persons.

### **Relationship of DOD Health Care to Medicare**

Active duty military personnel have been fully covered by Social Security and have paid Social Security taxes since Jan. 1, 1957. Social Security coverage includes eligibility for health care coverage under Medicare at age 65. It was the legislative intent of Congress that retired members of the uniformed services and their eligible dependents be provided with medical care after they retire from the military, usually between their late-30s and mid-40s. CHAMPUS/TRICARE was intended to supplement – not to replace – military health care.

Likewise, Congress did not intend that CHAMPUS/TRICARE should replace Medicare as a supplemental benefit to military health care. For this reason, retirees became ineligible to receive CHAMPUS/TRICARE benefits when, at age 65, they become eligible for Medicare.

Many argued that the structure was inherently unfair because retirees lost CHAMPUS/TRICARE benefits at the stage in life when they were increasingly likely to need them. It was argued that military personnel had been promised free medical care for life, not just until age 65. After considerable debate over various options for ensuring medical care to retired beneficiaries, Congress in the FY 2001 Defense Authorization Act (P.L. 106-259) provided that beginning Oct. 1, 2001, TRICARE pays out-of-pocket costs for services

provided under Medicare for beneficiaries over age 64 if they are enrolled in Medicare Part B. This benefit is known as TRICARE for Life (TFL). Disabled under 65 who are entitled to Medicare may continue to receive CHAMPUS benefits as a second payer to Medicare Parts A and B (with some restrictions).

**The Medicare Sustainable Growth Rate (SGR) System:** The Sustainable Growth Rate (SGR) is the method in law for determining the annual updates to the Medicare physician fee schedule. The SGR system was established because of the concern that the Medicare fee schedule itself would not adequately constrain overall increases in spending for physicians' services. While the fee schedule limits the amount that Medicare will pay for each service, there are no limits on the volume or mix of services. Under the SGR formula, if expenditures over a period are less than the cumulative spending target for the period, the annual update is increased. However, if spending exceeds the cumulative spending target over a certain period, future updates are reduced to bring spending back in line with the target.

There is a growing consensus among observers that the SGR system is fundamentally flawed and is creating instability in the Medicare program for providers and beneficiaries. The SGR was developed to restrain the volume growth of Medicare physician services. However, physician services provided to Medicare beneficiaries are growing at more than double the rate allowed under the SGR system.

One commonly asserted criticism is that the SGR system treats all services and physicians equally in the calculation of the annual payment update, which is applied uniformly with no distinction across specialties. The expenditure target is a nationwide aggregate and the annual updates are applied uniformly – there is no direct link between individual behavior and the subsequent update. Thus, actions might be individually rational (physicians provide and bill for additional services and collect greater reimbursement) yet collectively detrimental (the annual update is reduced). An individual physician who controls or reduces volume does not see a resulting increase in payments.

In addition, there has been an increased concern that continued declines in physician payment rates, especially among primary care specialties, may potentially jeopardize access to services. Finally, legislative overrides since 2002 have only provided temporary reprieve from projected reductions in payments under the SGR calculation, requiring even steeper reductions in payment rates in the future.

**Proposed Changes to SGR and Related Issues:** (*Note: This brief explanation of what has been proposed is important to understand in order to be able to grasp how TRICARE is linked to Medicare by way of the SGR.*) Given the concerns about the SGR, a key issue becomes how to fix or replace the current formula. Any permanent change would likely be quite costly because the Congressional Budget Office (CBO) baseline must assume current law, which estimates that a reduction in the conversion factor will occur for the next several years. Also, any change in the update formula will also have implications for beneficiaries – any overall increase in spending results in a proportional increase in premiums.

Regarding actual legislative proposals to change the way SGR is calculated, most would replace the current system of a single expenditure target (i.e. the SGR is calculated and applied uniformly with no distinction across specialties) with multiple targets – the key difference between the various legislative proposals is the **number** of multiple targets. Providing separate targets attempts to address, among other things, the criticism that the current update calculation penalized (or rewarded) all physicians identically regardless of each one's contribution towards meeting or exceeding the aggregate expenditure target. Some physicians and health care professionals are able to increase volume to offset declining reimbursement rates while others are not.

Most proposed changes to the SGR would also change the base year in the calculation future expenditure targets (essentially starting over) which could increase overall physician expenditures allowed in the baseline. One issue to consider with any proposals that increase total spending on physician services (by rebasing and changing the expenditures targets) is that the impact of the proposal would be felt not only by physicians, but also by other parts of the Medicare program, the DOD TRICARE program and beneficiaries under Medicare Part B. **If total spending on physician services was to increase, TRICARE expenditures would rise because its physician reimbursements are based on Medicare's physician fee schedule.**

**How are Private Health Care Providers Paid Under TRICARE?:** By law (P.L. 102-396) and federal regulation, health care providers treating TRICARE patients cannot bill for more than 115 percent of charges authorized by a DOD fee schedule. In some geographic areas, providers have been unwilling to accept TRICARE patients because of the limits on fees that can be charged. DOD has the authority to grant exceptions. As previously outlined in the section above, laws also require that payment levels for health care services provided under TRICARE be aligned with Medicare's fee schedule "to the extent practicable." More than 90 percent of TRICARE payment levels are now equivalent to those authorized by Medicare and about 10 percent are higher - steps are being taken to adjust some to Medicare levels.

### **TRICARE and the Democrats' Health Care Overhaul**

In the 111th Congress, President Obama and Congressional Democrats pushed through Congress and enacted their government takeover of health care. **In general, this law did not make any significant changes to the TRICARE program or to the Department of Veterans Affairs (VA) health care system.** Among its numerous provisions – when fully implemented in 2014 – this law will require most individuals, large employers and health plans to meet certain coverage requirements. Beginning in 2014, the law includes a mandate for most individuals to have health insurance, or potentially pay a penalty for noncompliance. Individuals will be required to maintain "minimum essential coverage" for themselves and their dependents.

Since the enactment of the Democrats' government takeover of health care, concerns have been raised by veterans and Veterans Service Organizations (VSOs) on how the new law would affect TRICARE beneficiaries, as well as veterans and certain dependents receiving care through the VA health care system. Moreover, many have sought clarification as to whether certain provisions in the law, such as the mandate for health insurance, or extending dependent coverage up to age 26, would apply to TRICARE and VA health care beneficiaries. Although the Obama Administration issued statements assuring that the two health care systems would not be negatively affected, some demanded statutory clarification.

**Special Medicare Part B Enrollment Window: In general, the law does not affect TRICARE administration, health care benefits, eligibility or cost to beneficiaries.** But, it does open a special Medicare Part B enrollment window to enable certain individuals to gain coverage under the TFL program. As previously mentioned, in FY 2002, TFL was established to act as a secondary payer to Medicare and provides supplemental coverage to TRICARE-eligible beneficiaries who are entitled to Medicare Part A based on age, disability or end-stage renal disease (ESRD). In order to participate in TFL, these TRICARE-eligible beneficiaries must enroll in and pay premiums for Medicare Part B. TRICARE-eligible beneficiaries who are entitled to Medicare Part A based on age, disability or ESRD, but decline Part B, lose eligibility for TRICARE benefits. Additionally, those who choose to enroll in Medicare Part B upon becoming eligible may elect to do so later during an annual enrollment period, but face a Medicare Part B late enrollment penalty.

The Democrats' government takeover of health care waives this Medicare Part B late enrollment penalty during the 12-month special enrollment period (SEP) for military retirees, their spouses (including widows/widowers) and dependent children who are otherwise eligible for TRICARE and are entitled to Medicare Part A based on disability or ESRD, but have declined Part B. DOD is required to identify and notify individuals of their eligibility for the SEP. **This is the only provision in the Democrats' government takeover of health care that has an effect on beneficiary eligibility under TRICARE.**

**Does TRICARE Meet the Law's "Minimum Essential Coverage" Requirements?:** As previously mentioned in this section, the Democrats' government takeover of health care requires certain individuals to maintain minimal essential health care coverage and provides a penalty for failure to do so beginning in 2014. In the law, "minimum essential coverage" is explicitly defined as coverage under:

- VA Health Care;
- Medicare Part A;
- Medicaid;
- CHIP
- **the TRICARE for Life (TFL) program**
- the Peace Corps program;
- an eligible employer-sponsored plan (as defined by the law);
- a government plan (local, state, federal) including the Federal Employees Health Benefits Plan (FEHBP) and any plan established by an Indian tribal government;
- any plan offered in the individual, small group or large group market;
- a grandfathered health plan; and
- any other health benefits coverage, such as a state health benefits risk pool, as recognized by the HHS Secretary in coordination with the Treasury Secretary.

**Also, the relevant definition of "government plan" includes the TRICARE program beyond the TFL program.** However, because TRICARE is not explicitly listed as "minimum essential coverage," some concern was expressed by beneficiary groups that regular TRICARE coverage may not meet the requirement.

**H.R. 4887, TRICARE Affirmation Act:** Because TRICARE was not explicitly listed as "minimum essential coverage," on March 20, 2010, the House passed H.R. 4887, the TRICARE Affirmation Act, by a vote of 403 to 0. You can see how they voted [here](#). It was then passed by the Senate and signed into law (P.L. 111-159) on April 26, 2010, by President Obama.

In general, H.R. 4887 amended the Internal Revenue Code to provide that TRICARE coverage satisfied the “minimum essential coverage” requirements as required by the Democrats’ government takeover of health care.

**TRICARE Coverage of Dependent Children Until Age 26:** As previously mentioned, the Democrats’ government takeover of health care extended health insurance coverage to dependent children until age 26. **This provision did not extend to TRICARE beneficiaries.** In general, eligibility for TRICARE is lost when either a dependent child turns 23 (if enrolled in an accredited school as a full-time student) or 21 if not enrolled.

Section 1001 of the health care law amends the Public Health Service Act to add a new Section 2714 specifying that a group health plan and a health insurance issuer offering group or individual health insurance coverage that provides dependent coverage of children shall continue to make such coverage available for and until the dependent child turns 26 years of age. However, the provisions of the Public Health Service Act do not appear to apply to TRICARE. Coverage under the TRICARE program is governed under a different statute, not the Public Health Service Act – and this statute defines the term “dependent” as a child who has not attained the age of 21 or has not attained the age of 23 and is enrolled in a full-time course of study at an institution of higher learning.

Even though the **Democrats’ government takeover of health care did not extend the extended health insurance coverage to dependent children until age 26,** the National Defense Authorization Act (NDAA) for FY 2010 (P.L. 111-383) amended the statute governing the TRICARE program by adding a new section, 1110b, extending coverage to children up to age 26 who are not otherwise eligible to enroll in an employer-sponsored plan to purchase TRICARE coverage. The premium would be equal to the cost of the coverage as determined by the DOD on an appropriate actuarial basis. DOD established this program as the “TRICARE Young Adult Program.” For calendar year 2012, the monthly premium for a TRICARE Young Adult (TYA) Prime enrollment is \$201 and \$176 for a TYA Standard enrollment.

The fact that there is a premium feature associated with this change to the TRICARE program does make the TRICARE program dissimilar from the coverage mandated by the Democrats’ government takeover of health care – the provision in the health care law extends dependent coverage, as opposed to creating a new policy for which a separate premium would be charged, as in what was done in the FY 2010 NDAA.

**TRICARE and the Independent Payment Advisory Board (IPAB):** The Independent Payment Advisory Board (IPAB) became law in 2010 under the Democrats’ government takeover of health care. In brief, under the law, IPAB’s 15 members are chosen by the president and confirmed by the Senate. Beginning in 2014, IPAB members are required to make annual proposals to reduce Medicare spending if the program’s expenditures exceed a targeted growth rate. These proposals automatically take effect the following year unless Congress is able to pass legislation that reduces costs by an equal or greater amount than IPAB’s proposal.

IPAB is specifically prohibited by law from “rationing, reducing Medicare benefits or eligibility, or increasing premiums or cost-sharing” in any of its proposals (it is also barred from cutting hospital reimbursement rates until 2020). **These restrictions narrow IPAB’s options to reducing Medicare payment levels for private health and prescription drug plans and cutting doctor reimbursement rates.**

While these proposals would not directly ration care, many medical associations and advocacy groups argue that by targeting medical providers, the IPAB's proposals will result in a de facto rationing of care by reducing reimbursements to levels where providers will simply stop offering certain procedures and plans or stop seeing Medicare patients all together.

**The potential reduction of Medicare payment levels and cutting of doctor reimbursement rates is what impact IPAB could have on TRICARE.** As previously mentioned, **TRICARE's physician reimbursements are based on Medicare's physician fee schedule.**

### **Military Health System and TRICARE Growing Costs**

Even if the number of active duty personnel in DOD remained the same over the next few years, costs associated with the military health system are expected to continue to grow. DOD estimated that in 2010, active duty military and their dependents made up 43 percent and retirees and their dependents 57 percent of eligible TRICARE beneficiaries dependents. DOD estimates that care provided to retirees and their dependents will make up more than 65 percent of DOD health care costs by 2015.

In 2011, the nonpartisan Center for Strategic and Budgetary Assessments (CSBA) said military health care costs rose at a real annual rate of 6.3 percent between 2001 and 2011 – **faster than the rate of inflation.** These increases in costs associated with the military health system and TRICARE result from general inflation in the cost of health care, an increasing percentage of care being provided to retirees and their dependents, increases in medical service delivery and prescription drug costs, the establishment of TFL, expanded access to defense health care for non-active duty reservists, the elimination of co-payments in TRICARE Prime and limited contribution and co-payment requirements for beneficiaries. The majority of the spending in military health care has gone to provide care to individuals no longer on active duty or to their family members.

Critics of the current program claim military retirees are using TRICARE at levels that exceed the original design of the program. These users often forego alternative insurance options, such as private, corporate or state-sponsored health care, because TRICARE fees are significantly lower than market rates. **For example, fees for TRICARE Prime cost \$460 a year for family coverage – the same as in 1995.** The Congressional Research Service (CRS) reported that if changes are not made to the TRICARE program, Pentagon spending on health care could total \$65 billion by FY 2015.

To address these rising costs, the **DOD has long pushed for increases in TRICARE fees and co-payments, which have not changed since 1995.** The Congressional Budget Office (CBO) reported in December 2008 that raising fees and co-payments could save about \$25 billion over the next decade.

### **Proposed and Enacted Increases to TRICARE Fees, Deductibles, Co-Pays, Etc.**

Because of these growing military health care costs, there have been several changes proposed, as well as enacted, by Republicans and Democrats alike.

**President Obama's FY 2012 Budget Proposal:** In his [FY 2012 budget proposal for DOD](#), President Obama proposed several changes to the TRICARE program. For the families of working-age retirees (under the age of 65), TRICARE Prime enrollment fees would increase by \$60, to \$520 total per year (or \$5.00 per month), and by \$30, to \$260 total per year (or \$2.50 per month) for individual military retirees who are still

working for FY 2012 (and then indexed to Medicare inflation in future years). The increases would not apply to survivors of members who die on active duty and medically retired members and their beneficiaries.

President Obama also proposed to increase the co-pay for prescriptions filled in retail pharmacies by between \$2.00 and \$3.00 each, while the co-pay for generic drugs filled through mail order would be eliminated. There would continue to be no co-pay for prescriptions filled at Military Treatment Facilities (MTFs).

**Increasing such fees and co-payments does not require an act of Congress.** In prior years, however, Congress through Defense authorization acts has prevented the DOD from increasing basic premiums or co-payments for TRICARE.

**President Obama's September 2011 Debt-Reduction Plan:** Last year in the midst of the Joint Deficit "Super Committee's" negotiations, President Obama proposed, as part of his debt-reduction plan in September 2011, two steps to offset rising military health care costs. He proposed a \$200 annual fee on the TFL program. The fee on TFL, which is now free, would then increase annually according to a cost of living adjustment (COLA). The White House estimated that this proposal would save \$6.7 billion in mandatory federal spending over 10 years.

The President also proposed changing TRICARE co-payments on prescription drugs to encourage people to use cheaper generics rather than brand-name pharmaceuticals. This change would have affected all, but active duty military personnel and would have reduced mandatory spending by \$15.1 billion and discretionary spending by \$5.5 billion over 10 years (as estimated by the White House).

The suggestion for fees on the TFL program was [supported](#) by both Senator Carl Levin (D-Mich.), chairman of the Senate Armed Services Committee, and Senator John McCain (R-Ariz.), the senior-most Republican on the Senate Armed Services Committee.

Here is what some said about President Obama's September 2011 proposal regarding TRICARE:

- ***USA Today***: "President Obama would raise pharmacy co-pays for military families and hike medical coverage fees for military retirees as part of his debt-reduction plan unveiled Monday." (Gregg Zoroya, "Military Groups Slam Obama Plan To Raise Co-Pays," [USA Today](#), Sept. 20, 2011)
- ***U.S. News & World Report***: "For members of the military and veterans who participate in the government's TRICARE program, there would be a new fee for a certain type of coverage after the age of 65, plus higher co-pays for some drugs." (Rick Newman, "The Biggest Losers Under Obama's Debt-Cutting Plan," [U.S. News & World Report blog](#), Sept. 19, 2011)
- ***USA Today***: "The Obama plan would introduce a \$200 annual fee for retired military families who wish to continue with TRICARE-for-Life program that supplements Medicare for retirees over 65. The proposal would save \$6.7 billion in government spending over 10 years, the White House says." (Gregg Zoroya, "Military Groups Slam Obama Plan To Raise Co-Pays," [USA Today](#), Sept. 20, 2011)
- ***USA Today***: "The administration also wants to encourage military families and retirees to use less expensive options when buying prescriptions under current coverage. The deficit plan would eliminate co-pays for generic mail-order drugs, while instituting percentage co-pay rather than a

small flat fee for drug store purchases. Obama says this would save more than \$20 billion over 20 years.” (Gregg Zoroya, “Military Groups Slam Obama Plan To Raise Co-Pays,” [USA Today](#), Sept. 20, 2011)

- **USA Today:** “Service groups representing millions of veterans moved quickly to criticize the proposals. Peter Gaytan, executive director of the American Legion, which has 2.4million veterans as members, said his organization opposes any hikes without offsetting cost-of-living increases in pensions.” (Gregg Zoroya, “Military Groups Slam Obama Plan To Raise Co-Pays,” [USA Today](#), Sept. 20, 2011)

**H.R. 1540, FY 2012 National Defense Authorization Act (NDAA):** The final version of H.R. 1540, the FY 2012 NDAA, was passed by the House on Dec. 14, 2011, by a vote of 283-136. You can see how they voted [here](#). It was signed into law by President Obama on Dec. 31, 2011 (P.L. 112-081).

Regarding the TRICARE program, the FY 2012 NDAA did **not** contain prohibitions to prevent the DOD from implementing the increases of basic premiums and co-payments for TRICARE as proposed in President Obama’s FY 2012 budget proposal. This effectively allowed the proposed FY 2012 increases to be implemented and they took effect on Oct. 1, 2011.

President Obama also had proposed increasing the fees each year starting in FY 2013, but by the rate of medical inflation, which the Pentagon had estimated to be about six percent. Differing from the President’s proposals, H.R. 1540, however, required that any increases implemented from FY 2013 forward could not exceed the general rate of inflation, ***which is much lower than medical inflation***. Specifically, H.R. 1540 limits any annual increases in TRICARE Prime enrollment fees to the percentage by which retiree pay is increased, or limited to COLA.

Although lower than what President Obama proposed in his FY 2012 budget proposal, H.R. 1540 essentially allowed for the first increases in TRICARE fees since the mid-1990s.

**President Obama’s FY 2013 Budget Proposal:** In his [FY 2013 budget proposal for DOD](#), President Obama proposed several changes to the TRICARE program. In general (these changes would only affect retirees – not active duty military personnel). Also, these proposals exempt survivors of members who die on active duty and medically retired and their family members from these increases:

- increase TRICARE Prime enrollment fee
- institute an enrollment fee for TRICARE Standard/Extra
- increase TRICARE Standard/Extra deductibles
- adjust the catastrophic cap (\$3,000 per family) to exclude enrollment fees and will be indexed to medical inflation
- increase co-pays for pharmaceuticals (excludes active duty service members)
- implement an enrollment fee for TFL program

- phase in fee changes over several years
- index fees/deductibles/Rx co-pays/catastrophic cap to reflect the growth in national health care costs
- exclude survivors of military members who died on active duty and medically-retired members from any fee increases

**TRICARE Prime for Working Age Retirees (under age 65):** Under President Obama’s FY 2013 budget proposal, working military retirees younger than 65 would pay a family annual enrollment fee of \$600 for someone making up to \$22,589 in military retirement pay, \$720 for someone making up to \$45,178 and \$820 annually for someone making \$45,179 or more. The fees in FY 2012 ranged from \$460 to \$520. These fee increases would be phased-in over a four-year period. Below is a chart (**Table 1**) detailing these enrollment fee increases by fiscal year and military retirement income amounts:

<b>Table 1 – TRICARE Prime Annual Family Enrollment Fees (Individual Fees = 50%)</b>						
<b>Retired Pay</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016*</b>	<b>FY 2017</b>
<b>Tier 1: \$0 – \$22,589</b>	\$460/\$520	\$600	\$680	\$760	\$850	\$893
<b>Tier 2: \$22,590 – \$45,178</b>	\$460/\$520	\$720	\$920	\$1,185	\$1,450	\$1,523
<b>Tier 3: \$45,179 &amp; above</b>	\$460/\$520	\$820	\$1,120	\$1,535	\$1,950	\$2,048

*\*Indexed to medical inflation (National Health Expenditures) after FY 2016*

As **Table 1** shows, the lowest earning tier of retirees would see their enrollment fees increase 48 percent from FY 2013 through FY 2017, the second tier would see an increase of 112 percent and the highest earning tier would see enrollment fees rise 150 percent.

**TRICARE Standard and Extra for Working Age Retirees (under age 65):** The TRICARE Standard and Extra (fee-for-service type) benefit programs currently have no enrollment fees and annual deductibles of \$150 per individual and \$300 per family. President Obama’s FY 2013 budget proposal would seek to implement an annual enrollment fee and increased deductibles. These increases would be phased-in over a five-year period and would then be indexed to medical inflation. Below is a chart (**Table 2**) detailing these deductible increases by fiscal year and type of beneficiary:

<b>Table 2 – TRICARE Standard/Extra Fees/Deductibles</b>						
	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017*</b>
<i>Annual Enrollment Fees</i>						
<b>Individual</b>	\$0	\$70	\$85	\$100	\$115	\$130
<b>Family</b>	\$0	\$140	\$170	\$200	\$230	\$250
<i>Annual Deductibles</i>						
<b>Individual</b>	\$150	\$160	\$200	\$230	\$260	\$290
<b>Family</b>	\$300	\$320	\$400	\$460	\$520	\$580

*\*Indexed to medical inflation (National Health Expenditures) after FY 2017*

As **Table 2** shows, working-age retirees on TRICARE Standard and TRICARE Extra plans, which are fee-for-service-type plans, currently have no enrollment fees and deductibles of \$150 per individual and \$300 per family. In FY 2013, the Pentagon would increase enrollment fees for individuals to \$70 and families to \$170. Deductible for an individual would rise to \$160 and for families to \$320.

**TFL Benefit Program for Retirees (age 65 and Older):** As previously outlined, the TFL program acts as a second player plan for TRICARE beneficiaries covering the costs not paid by Medicare. While the average “Medigap” plan with comparable coverage carried premiums of \$2,100 per individual in 2009, there are currently no annual fees for TFL coverage. President Obama’s FY 2013 budget proposal would implement annual fees for TFL coverage. These fees would be phased in over a four-year period and use the same tiering based on the beneficiary’s retired pay along with the same indexing and exemptions as the proposed TRICARE Prime fees. Below is a chart (**Table 3**) detailing these annual fees by fiscal year and amount of military retirement income:

Table 3 – TRICARE-for-Life Annual Enrollment Fees – per individual						
Retired Pay	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016*	FY 2017
Tier 1: \$0 – \$22,589	\$0	\$35	\$75	\$115	\$150	\$158
Tier 2: \$22,590 – \$45,178	\$0	\$75	\$150	\$225	\$300	\$317
Tier 3: \$45,179 & above	\$0	\$115	\$225	\$335	\$450	\$475

*\*Indexed to medical inflation (National Health Expenditures) after FY 2016*

**Pharmacy Co-Pays:** The President’s FY 2013 budget proposal would adjust pharmacy co-pay structure for retirees and active duty family members to “incentivize the use of mail order and generic drugs.” Prescriptions would continue to be filled at no cost to beneficiaries at Military Treatment Facilities (MTFs) and no fees would continue to apply to prescriptions for active duty service members. Below is a chart (**Table 4**) detailing the proposed co-pays for prescriptions filled through the TRICARE retail and mail-order pharmacy programs:

Table 4 – Pharmacy Co-Pays						
	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
<i>Retail – 1 month fill</i>						
Generic	\$5	\$5	\$6	\$7	\$8	\$9
Brand	\$12	\$26	\$28	\$30	\$32	\$34
Non-Formulary*	\$25	n/a	n/a	n/a	n/a	n/a
<i>Mail-Order – 3 month fill</i>						
Generic	\$0	\$0	\$0	\$0	\$0	\$9
Brand	\$9	\$26	\$28	\$30	\$32	\$34
Non-Formulary*	\$25	\$51	\$54	\$58	\$62	\$66
Military Treatment Facilities	No Change – Still \$0 Co-Pay					

*\*Non-Formulary pharmaceuticals will have limited availability in retail pharmacies*

Here is what some said about President Obama’s FY 2013 budget proposal regarding TRICARE:

- **McClatchy:** “Military-age retirees who make more than \$45,179 annually - a pension usually reserved for officers - will see their health care costs nearly quadruple, from \$600 annually in fiscal

year 2013 to \$2,048 in 2017.” (Nancy Youssef, “Heaviest 2013 Defense Budget Cuts Would Fall On Troops,” [McClatchy](#), Feb. 13, 2012)

- **USA Today:** “Veterans’ advocates denounced the proposed increases. Retired vice admiral Norb Ryan, president of the Military Officers Association of America, called it ‘a significant breach of faith with those who have already completed arduous careers of 20-30 or more years in uniform.’” (Tom Vanden Brook, “Pentagon’s \$525B Budget Lists Cuts To Jets, Benefits,” [USA Today](#), Feb. 14, 2012)

**H.R. 4310, FY 2013 NDAA:** H.R. 4310, the FY 2013 NDAA, was passed by the House on May 18, 2012, by a vote of 299-120. You can see how they voted [here](#). As of this writing, this House vote is the only legislative action taken thus far on H.R. 4310.

H.R. 4310 **effectively rejects most of the Obama Administration’s proposed increase in out-of-pocket fees for participants in the TRICARE program.** Specifically, it sets the cost-sharing rates under the TRICARE pharmacy benefits program as \$5 for generic medications, \$17 for formulary medications and \$44 for non-formulary medications obtained through retail pharmacies. It also sets co-pays at \$13 for formulary medications and \$43 for non-formulary medications obtained through the TRICARE mail-order pharmacy. Generic medications obtained through mail order would be free.

H.R. 4310 also limits any annual increase in cost-sharing rates under the TRICARE pharmacy program to the amount equal to the percentage increase by which retiree pay is increased (COLA) beginning Oct. 1, 2013.

Below is a chart prepared by the House Armed Services Committee (HASC) comparing the current pharmaceutical fees, what President Obama proposed in his FY 2013 budget and what is proposed in H.R. 4310:

<b>Retail Rx (1 Month fill)</b>	<b>Current Fee</b>	<b>President’s Proposal</b>	<b>House Proposal</b>
<b>Generic</b>	<b>\$5</b>	<b>\$5</b>	<b>\$5</b>
<b>Brand</b>	<b>\$12</b>	<b>\$26</b>	<b>\$17</b>
<b>Non-Formulary</b>	<b>\$25</b>	<b>N/A*</b>	<b>\$44</b>
<b>Mail-Order Rx (3 month fill)</b>	<b>Current Fee</b>	<b>President’s Proposal</b>	<b>House Proposal</b>
<b>Generic</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Brand</b>	<b>\$9</b>	<b>\$26</b>	<b>\$13</b>
<b>Non-Formulary</b>	<b>\$25</b>	<b>\$51</b>	<b>\$43</b>
<b>Military Treatment Facilities Rx</b>	<b>No change -- still \$0 co-pay</b>		

\*N/A = Not available at retail after FY 12

Additionally, you can click [here](#) for a Fact Sheet on TRICARE and the FY 2013 NDAA, prepared by HASC.

## **DEFENSE AND HOMELAND SECURITY TALKING POINTS**

- In order to stay on offense, a strong military is essential to keeping Americans free, safe and prosperous. We should preserve defense spending and work for our brave military men and women to provide for the needs of our Armed Forces.
- Democrats have continually pushed policies that ignore popular will by cutting spending for the military.
- It is imperative that we put national security above partisan politics when dealing with threats from terrorists and rogue nations.

## **ADDITIONAL INFORMATION AND RESOURCES**

- *The 9/11 Commission Report*, National Commission on Terrorist Attacks Upon the United States - <http://www.9-11commission.gov/>
- House Armed Services Committee (HASC) – <http://armedservices.house.gov/>
- National Guard – <http://www.nationalguard.mil/>
- U.S. Air Force (USAF) – <http://www.af.mil/>
- U.S. Army – <http://www.army.mil/>
- U.S. Coast Guard – <http://www.uscg.mil/>
- U.S. Department of Defense (DoD) – <http://www.defense.gov/>
- U.S. Department of Homeland Security (DHS) – <http://www.dhs.gov/>
- U.S. Marine Corps (USMC) – <http://www.marines.mil/>
- U.S. Navy (USN) – <http://www.navy.mil/>