

PUBLIC LAW 114-328—DEC. 23, 2016

**NATIONAL DEFENSE AUTHORIZATION ACT  
FOR FISCAL YEAR 2017**

## **TITLE V—MILITARY PERSONNEL POLICY**

### Subtitle A—Officer Personnel Policy

- Sec. 501. Reduction in number of general and flag officers on active duty and authorized strength after December 31, 2022, of such general and flag officers.
- Sec. 502. Repeal of statutory specification of general or flag officer grade for various positions in the Armed Forces.
- Sec. 503. Number of Marine Corps general officers.
- Sec. 504. Promotion eligibility period for officers whose confirmation of appointment is delayed due to nonavailability to the Senate of probative information under control of non-Department of Defense agencies.
- Sec. 505. Continuation of certain officers on active duty without regard to requirement for retirement for years of service.
- Sec. 506. Equal consideration of officers for early retirement or discharge.
- Sec. 507. Modification of authority to drop from rolls a commissioned officer.
- Sec. 508. Extension of force management authorities allowing enhanced flexibility for officer personnel management.
- Sec. 509. Pilot programs on direct commissions to cyber positions.
- Sec. 510. Length of joint duty assignments.
- Sec. 510A. Revision of definitions used for joint officer management.

### Subtitle B—Reserve Component Management

- Sec. 511. Authority for temporary waiver of limitation on term of service of Vice Chief of the National Guard Bureau.
- Sec. 512. Rights and protections available to military technicians.
- Sec. 513. Inapplicability of certain laws to National Guard technicians performing active Guard and Reserve duty.
- Sec. 514. Extension of removal of restrictions on the transfer of officers between the active and inactive National Guard.
- Sec. 515. Extension of temporary authority to use Air Force reserve component personnel to provide training and instruction regarding pilot training.
- Sec. 516. Expansion of eligibility for deputy commander of combatant command having United States among geographic area of responsibility to include officers of the Reserves.

### Subtitle C—General Service Authorities

- Sec. 521. Matters relating to provision of leave for members of the Armed Forces, including prohibition on leave not expressly authorized by law.
- Sec. 522. Transfer of provision relating to expenses incurred in connection with leave canceled due to contingency operations.
- Sec. 523. Expansion of authority to execute certain military instruments.
- Sec. 524. Medical examination before administrative separation for members with post-traumatic stress disorder or traumatic brain injury in connection with sexual assault.
- Sec. 525. Reduction of tenure on the temporary disability retired list.
- Sec. 526. Technical correction to voluntary separation pay and benefits.
- Sec. 527. Consolidation of Army marketing and pilot program on consolidated Army recruiting.

### Subtitle D—Member Whistleblower Protections and Correction of Military Records

- Sec. 531. Improvements to whistleblower protection procedures.
- Sec. 532. Modification of whistleblower protection authorities to restrict contrary findings of prohibited personnel action by the Secretary concerned.
- Sec. 533. Availability of certain Correction of Military Records and Discharge Review Board information through the Internet.
- Sec. 534. Improvements to authorities and procedures for the correction of military records.
- Sec. 535. Treatment by discharge review boards of claims asserting post-traumatic stress disorder or traumatic brain injury in connection with combat or sexual trauma as a basis for review of discharge.
- Sec. 536. Comptroller General of the United States review of integrity of Department of Defense whistleblower program.

### Subtitle E—Military Justice and Legal Assistance Matters

- Sec. 541. United States Court of Appeals for the Armed Forces.
- Sec. 542. Effective prosecution and defense in courts-martial and pilot programs on professional military justice development for judge advocates.

- Sec. 543. Inclusion in annual reports on sexual assault prevention and response efforts of the Armed Forces of information on complaints of retaliation in connection with reports of sexual assault in the Armed Forces.
- Sec. 544. Extension of the requirement for annual report regarding sexual assaults and coordination with release of Family Advocacy Program report.
- Sec. 545. Metrics for evaluating the efforts of the Armed Forces to prevent and respond to retaliation in connection with reports of sexual assault in the Armed Forces.
- Sec. 546. Training for Department of Defense personnel who investigate claims of retaliation.
- Sec. 547. Notification to complainants of resolution of investigations into retaliation.
- Sec. 548. Modification of definition of sexual harassment for purposes of investigations by commanding officers of complaints of harassment.
- Sec. 549. Improved Department of Defense prevention of and response to hazing in the Armed Forces.

**Subtitle F—National Commission on Military, National, and Public Service**

- Sec. 551. Purpose, scope, and definitions.
- Sec. 552. Preliminary report on purpose and utility of registration system under Military Selective Service Act.
- Sec. 553. National Commission on Military, National, and Public Service.
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- Sec. 555. Principles and procedure for Commission recommendations.
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**Subtitle G—Member Education, Training, Resilience, and Transition**

- Sec. 561. Modification of program to assist members of the Armed Forces in obtaining professional credentials.
- Sec. 562. Inclusion of alcohol, prescription drug, opioid, and other substance abuse counseling as part of required preseparation counseling.
- Sec. 563. Inclusion of information in Transition Assistance Program regarding effect of receipt of both veteran disability compensation and voluntary separation pay.
- Sec. 564. Training under Transition Assistance Program on career and employment opportunities associated with transportation security cards.
- Sec. 565. Extension of suicide prevention and resilience program.
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- Sec. 571. Continuation of authority to assist local educational agencies that benefit dependents of members of the Armed Forces and Department of Defense civilian employees.
- Sec. 572. One-year extension of authorities relating to the transition and support of military dependent students to local educational agencies.
- Sec. 573. Annual notice to members of the Armed Forces regarding child custody protections guaranteed by the Servicemembers Civil Relief Act.
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- Sec. 575. Reporting on allegations of child abuse in military families and homes.
- Sec. 576. Repeal of Advisory Council on Dependents' Education.
- Sec. 577. Support for programs providing camp experience for children of military families.
- Sec. 578. Comptroller General of the United States assessment and report on Exceptional Family Member Programs.
- Sec. 579. Impact aid amendments.

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- Sec. 581. Posthumous advancement of Colonel George E. "Bud" Day, United States Air Force, on the retired list.
- Sec. 582. Authorization for award of medals for acts of valor during certain contingency operations.
- Sec. 583. Authorization for award of the Medal of Honor to Gary M. Rose and James C. McCloughan for acts of valor during the Vietnam War.
- Sec. 584. Authorization for award of Distinguished-Service Cross to First Lieutenant Melvin M. Spruiell for acts of valor during World War II.

## **Subtitle F—National Commission on Military, National, and Public Service**

### **SEC. 551. PURPOSE, SCOPE, AND DEFINITIONS.**

(a) **PURPOSE.**—The purpose of this subtitle is to establish the National Commission on Military, National, and Public Service to—

(1) conduct a review of the military selective service process (commonly referred to as “the draft”); and

(2) consider methods to increase participation in military, national, and public service in order to address national security and other public service needs of the Nation.

(b) **SCOPE OF REVIEW.**—In order to provide the fullest understanding of the matters required under the review under subsection (a), the Commission shall consider—

(1) the need for a military selective service process, including the continuing need for a mechanism to draft large numbers of replacement combat troops;

(2) means by which to foster a greater attitude and ethos of service among United States youth, including an increased propensity for military service;

(3) the feasibility and advisability of modifying the military selective service process in order to obtain for military, national, and public service individuals with skills (such as medical, dental, and nursing skills, language skills, cyber skills, and science, technology, engineering, and mathematics (STEM) skills) for which the Nation has a critical need, without regard to age or sex; and

(4) the feasibility and advisability of including in the military selective service process, as so modified, an eligibility or entitlement for the receipt of one or more Federal benefits (such as educational benefits, subsidized or secured student loans, grants or hiring preferences) specified by the Commission for purposes of the review.

(c) **DEFINITIONS.**—In this subtitle:

(1) The term “military service” means active service (as that term is defined in subsection (d)(3) of section 101 of title 10, United States Code) in one of the uniformed services (as that term is defined in subsection (a)(5) of such section).

(2) The term “national service” means civilian employment in Federal or State Government in a field in which the Nation and the public have critical needs.

(3) The term “public service” means civilian employment in any non-governmental capacity, including with private for-profit organizations and non-profit organizations (including with appropriate faith-based organizations), that pursues and enhances the common good and meets the needs of communities, the States, or the Nation in sectors related to security, health, care for the elderly, and other areas considered appropriate by the Commission for purposes of this subtitle.

**SEC. 552. PRELIMINARY REPORT ON PURPOSE AND UTILITY OF REGISTRATION SYSTEM UNDER MILITARY SELECTIVE SERVICE ACT.**

(a) **REPORT REQUIRED.**—To assist the Commission in carrying out its duties under this subtitle, the Secretary of Defense shall—

(1) submit, not later than July 1, 2017, to the Committees on Armed Services of the Senate and the House of Representatives and to the Commission a report on the current and future need for a centralized registration system under the Military Selective Service Act (50 U.S.C. 3801 et seq.); and

(2) provide a briefing on the results of the report.

(b) **ELEMENTS OF REPORT.**—The report required by subsection (a) shall include the following:

(1) A detailed analysis of the current benefits derived, both directly and indirectly, from the Military Selective Service System, including—

(A) the extent to which mandatory registration benefits military recruiting;

(B) the extent to which a national registration capability serves as a deterrent to potential enemies of the United States; and

(C) the extent to which expanding registration to include women would impact these benefits.

(2) An analysis of the functions currently performed by the Selective Service System that would be assumed by the Department of Defense in the absence of a national registration capability.

(3) An analysis of the systems, manpower, and facilities that would be needed by the Department to physically mobilize inductees in the absence of the Selective Service System.

(4) An analysis of the feasibility and utility of eliminating the current focus on mass mobilization of primarily combat troops in favor of a system that focuses on mobilization of all military occupational specialties, and the extent to which such a change would impact the need for both male and female inductees.

(5) A detailed analysis of the Department's personnel needs in the event of an emergency requiring mass mobilization, including—

(A) a detailed timeline, along with the factors considered in arriving at this timeline, of when the Department would require—

(i) the first inductees to report for service;

(ii) the first 100,000 inductees to report for service;

and

(iii) the first medical personnel to report for service; and

(B) an analysis of any additional critical skills that would be needed in the event of a national emergency, and a timeline for when the Department would require the first inductees to report for service.

(6) A list of the assumptions used by the Department when conducting its analysis in preparing the report.

(c) **COMPTROLLER GENERAL REVIEW.**—Not later than December 1, 2017, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House

of Representatives and to the Commission a review of the procedures used by the Department of Defense in evaluating selective service requirements.

**SEC. 553. NATIONAL COMMISSION ON MILITARY, NATIONAL, AND PUBLIC SERVICE.**

(a) **ESTABLISHMENT.**—There is established in the executive branch an independent commission to be known as the National Commission on Military, National, and Public Service (in this subtitle referred to as the “Commission”). The Commission shall be considered an independent establishment of the Federal Government as defined by section 104 of title 5, United States Code, and a temporary organization under section 3161 of such title.

(b) **MEMBERSHIP.**—

(1) **NUMBER AND APPOINTMENT.**—The Commission shall be composed of 11 members appointed as follows:

(A) The President shall appoint three members.

(B) The Majority Leader of the Senate shall appoint one member.

(C) The Minority Leader of the Senate shall appoint one member.

(D) The Speaker of the House of Representatives shall appoint one member.

(E) The Minority Leader of the House of Representatives shall appoint one member.

(F) The Chairman of the Committee on Armed Services of the Senate shall appoint one member.

(G) The ranking minority member of the Committee on Armed Services of the Senate shall appoint one member.

(H) The Chairman of the Committee on Armed Services of the House of Representatives shall appoint one member.

(I) The ranking minority member of the Committee on Armed Services of the House of Representatives shall appoint one member.

(2) **DEADLINE FOR APPOINTMENT.**—Members shall be appointed to the Commission under paragraph (1) not later than 90 days after the Commission establishment date.

(3) **EFFECT OF LACK OF APPOINTMENT BY APPOINTMENT DATE.**—If one or more appointments under subparagraph (A) of paragraph (1) is not made by the appointment date specified in paragraph (2), the authority to make such appointment or appointments shall expire, and the number of members of the Commission shall be reduced by the number equal to the number of appointments so not made. If an appointment under subparagraph (B), (C), (D), (E), (F), (G), (H), or (I) of paragraph (1) is not made by the appointment date specified in paragraph (2), the authority to make an appointment under such subparagraph shall expire, and the number of members of the Commission shall be reduced by the number equal to the number otherwise appointable under such subparagraph.

(c) **CHAIR AND VICE CHAIR.**—The Commission shall elect a Chair and Vice Chair from among its members.

(d) **TERMS.**—Members shall be appointed for the life of the Commission. A vacancy in the Commission shall not affect its powers, and shall be filled in the same manner as the original appointment was made.

(e) STATUS AS FEDERAL EMPLOYEES.—Notwithstanding the requirements of section 2105 of title 5, United States Code, including the required supervision under subsection (a)(3) of such section, the members of the Commission shall be deemed to be Federal employees.

(f) PAY FOR MEMBERS OF THE COMMISSION.—

(1) IN GENERAL.—Each member, other than the Chair, of the Commission shall be paid at a rate equal to the daily equivalent of the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Commission.

(2) CHAIR.—The Chair of the Commission shall be paid at a rate equal to the daily equivalent of the annual rate of basic pay payable for level III of the Executive Schedule under section 5314, of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Commission.

(g) USE OF GOVERNMENT INFORMATION.—The Commission may secure directly from any department or agency of the Federal Government such information as the Commission considers necessary to carry out its duties. Upon such request of the chair of the Commission, the head of such department or agency shall furnish such information to the Commission.

(h) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(i) AUTHORITY TO ACCEPT GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services, goods, and property from non-Federal entities for the purposes of aiding and facilitating the work of the Commission. The authority in this subsection does not extend to gifts of money.

(j) PERSONAL SERVICES.—

(1) AUTHORITY TO PROCURE.—The Commission may—

(A) procure the services of experts or consultants (or of organizations of experts or consultants) in accordance with the provisions of section 3109 of title 5, United States Code; and

(B) pay in connection with such services travel expenses of individuals, including transportation and per diem in lieu of subsistence, while such individuals are traveling from their homes or places of business to duty stations.

(2) LIMITATION.—The total number of experts or consultants procured pursuant to paragraph (1) may not exceed five experts or consultants.

(3) MAXIMUM DAILY PAY RATES.—The daily rate paid an expert or consultant procured pursuant to paragraph (1) may not exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(k) FUNDING.—Of the amounts authorized to be appropriated by this Act for fiscal year 2017 for the Department of Defense, up to \$15,000,000 shall be made available to the Commission to carry out its duties under this subtitle. Funds made available

to the Commission under the preceding sentence shall remain available until expended.

**SEC. 554. COMMISSION HEARINGS AND MEETINGS.**

(a) **IN GENERAL.**—The Commission shall conduct hearings on the recommendations it is taking under consideration. Any such hearing, except a hearing in which classified information is to be considered, shall be open to the public. Any hearing open to the public shall be announced on a Federal website at least 14 days in advance. For all hearings open to the public, the Commission shall release an agenda and a listing of materials relevant to the topics to be discussed. The Commission is authorized and encouraged to hold hearings and meetings in various locations throughout the country to provide maximum opportunity for public comment and participation in the Commission’s execution of its duties.

(b) **MEETINGS.**—

(1) **INITIAL MEETING.**—The Commission shall hold its initial meeting not later than 30 days after the date as of which all members have been appointed.

(2) **SUBSEQUENT MEETINGS.**—After its initial meeting, the Commission shall meet upon the call of the chair or a majority of its members.

(3) **PUBLIC MEETINGS.**—Each meeting of the Commission shall be held in public unless any member objects or classified information is to be considered.

(c) **QUORUM.**—Six members of the Commission shall constitute a quorum, but a lesser number may hold hearings or meetings.

(d) **PUBLIC COMMENTS.**—

(1) **SOLICITATION.**—The Commission shall seek written comments from the general public and interested parties on matters of the Commission’s review under this subtitle. Comments shall be requested through a solicitation in the Federal Register and announcement on the Internet website of the Commission.

(2) **PERIOD FOR SUBMITTAL.**—The period for the submittal of comments pursuant to the solicitation under paragraph (1) shall end not earlier than 30 days after the date of the solicitation and shall end on or before the date on which recommendations are transmitted to the Commission under section 555(d).

(3) **USE BY COMMISSION.**—The Commission shall consider the comments submitted under this subsection when developing its recommendations.

(e) **SPACE FOR USE OF COMMISSION.**—Not later than 90 days after the date of the enactment of this Act, the Administrator of General Services, in consultation with the Secretary, shall identify and make available suitable excess space within the Federal space inventory to house the operations of the Commission. If the Administrator is not able to make such suitable excess space available within such 90-day period, the Commission may lease space to the extent the funds are available.

(f) **CONTRACTING AUTHORITY.**—The Commission may acquire administrative supplies and equipment for Commission use to the extent funds are available.

**SEC. 555. PRINCIPLES AND PROCEDURE FOR COMMISSION RECOMMENDATIONS.**

(a) **CONTEXT OF COMMISSION REVIEW.**—The Commission shall—

(1) conduct a review of the military selective service process; and

(2) consider methods to increase participation in military, national, and public service opportunities to address national security and other public service needs of the Nation.

(b) DEVELOPMENT OF COMMISSION RECOMMENDATIONS.—The Commission shall develop recommendations on the matters subject to its review under subsection (a) that are consistent with the principles established by the President under subsection (c).

(c) PRESIDENTIAL PRINCIPLES.—

(1) IN GENERAL.—Not later than three months after the Commission establishment date, the President shall establish and transmit to the Commission and Congress principles for reform of the military selective service process, including means by which to best acquire for the Nation skills necessary to meet the military, national, and public service requirements of the Nation in connection with that process.

(2) ELEMENTS.—The principles required under this subsection shall address the following:

(A) Whether, in light of the current and predicted global security environment and the changing nature of warfare, there continues to be a continuous or potential need for a military selective service process designed to produce large numbers of combat members of the Armed Forces, and if so, whether such a system should include mandatory registration by all citizens and residents, regardless of sex.

(B) The need, and how best to meet the need, of the Nation, the military, the Federal civilian sector, and the private sector (including the non-profit sector) for individuals possessing critical skills and abilities, and how best to employ individuals possessing those skills and abilities for military, national, or public service.

(C) How to foster within the Nation, particularly among United States youth, an increased sense of service and civic responsibility in order to enhance the acquisition by the Nation of critically needed skills through education and training, and how best to acquire those skills for military, national, or public service.

(D) How to increase a propensity among United States youth for service in the military, or alternatively in national or public service, including how to increase the pool of qualified applicants for military service.

(E) The need in Government, including the military, and in the civilian sector to increase interest, education, and employment in certain critical fields, including science, technology, engineering, and mathematics (STEM), national security, cyber, linguistics and foreign language, education, health care, and the medical professions.

(F) How military, national, and public service may be incentivized, including through educational benefits, grants, federally-insured loans, Federal or State hiring preferences, or other mechanisms that the President considers appropriate.

(G) Any other matters the President considers appropriate for purposes of this subtitle.

(d) **CABINET RECOMMENDATIONS.**—Not later than seven months after the Commission establishment date, the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the Secretary of Labor, and such other Government officials, and such experts, as the President shall designate for purposes of this subsection shall jointly transmit to the Commission and Congress recommendations for the reform of the military selective service process and military, national, and public service in connection with that process.

(e) **COMMISSION REPORT AND RECOMMENDATIONS.**—

(1) **REPORT.**—Not later than 30 months after the Commission establishment date, the Commission shall transmit to the President and Congress a report containing the findings and conclusions of the Commission, together with the recommendations of the Commission regarding the matters reviewed by the Commission pursuant to this subtitle. The Commission shall include in the report legislative language and recommendations for administrative action to implement the recommendations of the Commission. The findings and conclusions in the report shall be based on the review and analysis by the Commission of the recommendations made under subsection (d).

(2) **REQUIREMENT FOR APPROVAL.**—The recommendations of the Commission must be approved by at least five members of the Commission before the recommendations may be transmitted to the President and Congress under paragraph (1).

(3) **PUBLIC AVAILABILITY.**—The Commission shall publish a copy of the report required by paragraph (1) on an Internet website available to the public on the same date on which it transmits that report to the President and Congress under that paragraph.

(f) **JUDICIAL REVIEW PRECLUDED.**—Actions under this section of the President, the officials specified or designated under subsection (d), and the Commission shall not be subject to judicial review.

**SEC. 556. EXECUTIVE DIRECTOR AND STAFF.**

(a) **EXECUTIVE DIRECTOR.**—The Commission shall appoint and fix the rate of basic pay for an Executive Director in accordance with section 3161 of title 5, United States Code.

(b) **STAFF.**—Subject to subsections (c) and (d), the Executive Director, with the approval of the Commission, may appoint and fix the rate of basic pay for additional personnel as staff of the Commission in accordance with section 3161 of title 5, United States Code.

(c) **LIMITATIONS ON STAFF.**—

(1) **NUMBER OF DETAILEES FROM EXECUTIVE DEPARTMENTS.**—Not more than one-third of the personnel employed by or detailed to the Commission may be on detail from the Department of Defense and other executive branch departments.

(2) **PRIOR DUTIES WITHIN EXECUTIVE BRANCH.**—A person may not be detailed from the Department of Defense or other executive branch department to the Commission if, in the year before the detail is to begin, that person participated personally and substantially in any matter concerning the preparation

of recommendations for the military selective service process and military and public service in connection with that process.

(d) **LIMITATIONS ON PERFORMANCE REVIEWS.**—No member of the uniformed services, and no officer or employee of the Department of Defense or other executive branch department (other than a member of the uniformed services or officer or employee who is detailed to the Commission), may—

(1) prepare any report concerning the effectiveness, fitness, or efficiency of the performance of the staff of the Commission or any person detailed to that staff;

(2) review the preparation of such a report (other than for administrative accuracy); or

(3) approve or disapprove such a report.

**SEC. 557. TERMINATION OF COMMISSION.**

Except as otherwise provided in this subtitle, the Commission shall terminate not later than 36 months after the Commission establishment date.

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