

LEGISLATING “MILITARY ENTITLEMENTS”: A CHALLENGE TO THE  
CONGRESSIONAL ABDICATION THESIS

by

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## **DEDICATION**

This is dedicated to Georgette. This dissertation is not nearly the achievement that she is.

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## LIST OF ABBREVIATIONS

All-Volunteer Force .....	AVF
Congressional Budget Office.....	CBO
Cost of living adjustment .....	COLA
Department of Defense .....	DOD
Department of Veterans Affairs .....	VA
Directive Report Language.....	DRL
Federal Employees Health Benefits Program .....	FEHBP
Fiscal Year .....	FY
Government Accountability Office .....	GAO
House Armed Services Committee.....	HASC
Military Compensation and Retirement Modernization Commission .....	MCRMC
Military Health System .....	MHS
Military Treatment Facility.....	MTF
Medicare-Eligible Retiree Health Care Fund .....	MERHCF
National Defense Authorization Act.....	NDAA
Office of Management and Budget.....	OMB
TRICARE-for-Life .....	TFL
Senate Armed Services Committee .....	SASC
Special and incentive .....	S&I
Statement of Administration Policy.....	SAP
World War II.....	WWII

## **DISCLAIMER**

The views expressed in this dissertation are those of the author and do not reflect the official policy or position of the Military Compensation and Retirement Modernization Commission or any other entity of the United States Government.

## **ABSTRACT**

### **LEGISLATING “MILITARY ENTITLEMENTS”: A CHALLENGE TO THE CONGRESSIONAL ABDICATION THESIS**

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The field of Congress and national security, with few exceptions, describes Congress in the post-World War II era as a secondary player in the development of defense policy. In fact, some scholars argue that Congress' approach at times is characterized by deference, ambivalence, and even abdication. However, this dissertation argues that by failing to recognize some of the most influential forms of actual congressional power, scholars do not have a comprehensive understanding of the legislative branch's participation in defense policymaking. In fact, in some areas of defense policy, such as military personnel policy, Congress actually leads.

The dissertation uses a case study on TRICARE-for-Life (TFL) to answer the research question: How have Congress' disagreements with the executive on TFL and subsequent legislative mandates affected broader defense policies and budgets, and what does the case indicate about Congress' role in defense policymaking? The dissertation concludes

that the legislative branch does not defer to the executive in military personnel policymaking. Instead, it commands. Congress exercises its power in three noteworthy ways. First, it takes direct action to pursue its policy agenda, often over the objections of DOD and the executive. Second, it liberally uses its lawmaking authority to put in statute detailed policies, including military entitlements, thereby achieving and maintaining its desired policies. Third, congressionally mandated military personnel policies, and especially compensation, often result in budgetary implications that alter broader defense policy. Collectively, these three actions and their implications—some intentional and some inadvertent and indirect—are important elements of actual congressional power. Although the congressional action in question occurs in military personnel policy, the spillover effects are significant for national security in general. Current scholarship overlooks such activity, causing the field to underappreciate the legislative branch's influence.

Many DOD officials and analysts have called for reform of military pay and benefits because the significant growth in cost per service member makes compensating the force less affordable, which presents concerns for future military capabilities. Because the legislature leads in military compensation and because military entitlements cannot be altered without amending the underlying program law, Congress has and will continue to play an important part in this public policy area. This dissertation prepares practitioners for ongoing attempts to reform military compensation by offering critical information about Congress' involvement in military compensation.

## **I. INTRODUCTION**

This dissertation seeks to contribute new knowledge to the field of Congress and national security. The literature, with few exceptions, describes Congress in the post-World War II (WWII) era as a secondary player in the development of defense policy. In fact, some scholars argue that Congress' approach at times is characterized by deference, ambivalence, and even abdication. However, this dissertation argues that by failing to recognize some of the most influential forms of actual congressional power, scholars do not have a comprehensive understanding of the legislative branch's participation in defense policymaking. In fact, in some areas of defense policy, such as military personnel policy, Congress actually leads.

In the 2000s, Congress passed several laws to expand military pay and benefits, including TRICARE-for-Life, a policy that requires the Department of Defense to provide supplemental healthcare coverage to Medicare-eligible military retirees. Such policy changes have contributed to significant growth in military personnel costs per troop. If left unchecked, this cost growth could induce one of three outcomes. One possibility is that the overall defense budget could expand to accommodate increasing costs, which is unlikely in the current era of fiscal austerity. Alternatively, if the defense budget and the size of the military remain constant while compensation costs continue their current budget trajectory, the military personnel budget accounts could consume the

entire defense budget in the next twenty-five years.<sup>1</sup> This scenario is also unlikely. A third possibility is that policymakers could be forced to decrease manpower levels to accommodate compensation costs, which could consequently reduce US military capabilities. Evidence suggests this third scenario is already occurring.<sup>2</sup>

When presented with such impracticable or perilous options, why not simply reduce spending on military pay and benefits? The growing costs of military personnel have been debated recently, with many calling for reform. In fact, concerned senior officials in the executive branch have characterized previously sacrosanct military pay and benefits as unsustainable. These officials have attempted to work with Congress to control compensation costs. However, Congress often rejects the president's proposals, as its members generally consider the current costs a necessary expense to support an all-volunteer military.

This dissertation does not attempt to solve the costly and increasingly debated issue of military compensation or prescribe the "right" level of pay and benefits for troops who have sacrificed a great deal, particularly over the last decade. Rather, it examines a crucial element of how military compensation policy is made: Congress'

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<sup>1</sup> Todd Harrison, "Rebalancing Military Compensation: An Evidence Based Approach" (Washington, D.C.: Center for Strategic and Budgetary Assessments, 2012), i. Harrison predicts this scenario could occur by the year 2039. This projection assumes that the budget trajectory continues its current course and the DOD budget remains flat with inflation.

<sup>2</sup> Military Compensation and Retirement Modernization Commission, "Interim Report" (Arlington, VA, June 2014), 18, 21–22, <http://www.mcrmc.gov/public/docs/reports/MCRMC-Interim-Report-Final-HIRES-L.pdf>; Bipartisan Policy Center, "Rapid Growth in U.S. Military Personnel Costs Driven by Pay and Benefit Increases" (Washington, D.C., July 2014), [http://bipartisanpolicy.org/wp-content/uploads/sites/default/files/2014-07-25%20AEI%20BPC%20Military%20Personnel%20Cost%20Growth\\_format.pdf](http://bipartisanpolicy.org/wp-content/uploads/sites/default/files/2014-07-25%20AEI%20BPC%20Military%20Personnel%20Cost%20Growth_format.pdf).



involvement. In doing so, this dissertation illuminates the reasons why it is so difficult to restrict military compensation and curtail the growth in its expenditures.

The dissertation will present evidence that demonstrates how Congress influences national security policymaking by legislating unplanned and unrequested structural policies. Despite Congress' decisions on these important policies and their strategic implications, there is minimal scholarship on the legislative branch's involvement in military personnel compensation. Most scholars who study the balance of power between Congress and the executive in national security policymaking assert that the president commands while Congress most often yields. Although Congress has attempted to take a more active role since the 1970s, legislators' increased involvement is usually through means that are "indirect" (e.g. hearings, speeches) rather than "direct" (i.e. substantive legislation) and is generally limited to "structural" policy involving domestic stakeholders and parochial distribution of resources (e.g. earmarks for weapons systems, opposition to base closures).<sup>3</sup> Academia, therefore, regards Congress as a secondary player.

However, current scholarship typically focuses on the use of force, which is only a fraction of defense policy. Furthermore, when structural policy is considered, the literature appears to focus mostly on weapons acquisition, neglecting other subsets of structural policy like military compensation. The literature's conclusion that Congress relies mostly on indirect, rather than direct, methods to shape national security policy

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<sup>3</sup> As opposed to "strategic" policy, which involves designing and equipping the military to meet future national security demands, or "crisis" policy relating to emerging threats and the use of force.

does not take into account Congress' use of laws to require particular military pay levels or benefits. These laws are arguably analogous to entitlements, a concept also not present in the literature.

This dissertation argues that Congress does indeed assert its policy agenda when it passes legislation on military compensation and that these entitlements have important implications. The dissertation uses a case study on TRICARE-for-Life (TFL) to answer the research question: How have Congress' disagreements with the executive on TFL and subsequent legislative mandates affected broader defense policies and budgets, and what does the case indicate about Congress' role in defense policymaking? The dissertation finds that Congress exercises its power in three important ways. First, it took direct action to create and in later years protect TRICARE-for-Life, often over the executive's objections. Second, Congress designed TRICARE-for-Life as a "military entitlement," which obligates the government to provide and fund this benefit indefinitely. Because entitlements are fixed in statute, Congress is the only government body capable of altering their course. When Congress legislates, especially military entitlements or prescriptive laws, it transfers control of a policy from the executive to the legislative branch. Third, by mandating a quasi-permanent benefit with open-ended mandatory spending, Congress contributed to the growth in military personnel costs during the 2000s that have necessitated trade-offs within the defense budget. Collectively, these three actions and their implications—some intentional and some inadvertent and indirect—are important elements of actual congressional power. Although the congressional action in question occurs in military personnel policy, the spillover effects

are significant for national security in general. Current scholarship overlooks such activity, causing the field to underappreciate the legislative branch's influence.

The dissertation begins with a review of the scholarship on Congress and national security, including Lindsay and Ripley's work on the different types of defense policies and methods of congressional involvement in chapter two.<sup>4</sup> The concepts of structural, strategic, and crisis policies as well as indirect and direct congressional methods of action inform the dissertation's analysis of legislative activity. The chapter additionally expands on the gaps in the literature that are noted above, which this research seeks to address. Chapter two also includes a review of the literature on military compensation policies. It explains the objective and types of military pay and benefits and summarizes the literature on the effectiveness of the different types, which is applicable in evaluating congressionally mandated compensation. Finally, it presents a summary of how scholars usually define entitlements and describe their characteristics, particularly their budgetary implications. This is useful for comparing TRICARE-for-Life to an entitlement and developing a definition of "military entitlements."

Chapter three offers the necessary background to familiarize the reader with the healthcare benefit provided in the military system. It also explains the health care available to Medicare-eligible retirees prior to TRICARE-for-Life, which gives the reader an overview of the policy problem TRICARE-for-Life was designed to fix. It also notes military retirees' claim to free, lifetime health care and the political pressure that

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<sup>4</sup> James M. Lindsay and Randall B. Ripley, "How Congress Influences Foreign and Defense Policy," in *Congress Resurgent: Foreign and Defense Policy on Capitol Hill*, ed. Randall B. Ripley and James M. Lindsay (Ann Arbor: University of Michigan Press, 1993), 17–35.

lawmakers faced to honor this perceived promise. Finally, chapter three gives a brief recount of the expansion of military compensation in the 2000s, including Congress' role in it, its strategic implications, and the policy dilemma it presents decision-makers today. This is important context for understanding the implications of congressional action on TFL.

The research design is explained in chapter four. The dissertation uses qualitative methods to answer the primary research question stated above. Specifically, the dissertation uses the case study approach to examine the inter-branch policymaking dynamic during the creation and protection of TRICARE-for-Life, as well as TFL's policy implications. The main method of analysis was document analysis, which involved the collection and study of a variety of historical legislative and executive branch documents related to the TRICARE-for-Life legislation, the two branches' positions on the policy, and the effects of the benefit. To supplement the document analysis, limited semi-structured interviews were conducted with participants from Congress, DOD, and the Office of Management and Budget (OMB) who had first-hand knowledge of the TRICARE-for-Life case.

The results of the research are presented in chapters five, six, and seven. Chapter five reports how Congress advanced its policy agenda in creating and later protecting the TRICARE-for-Life policy over the objections of the executive. In one year, the benefit progressed from temporary pilot programs, to a limited commitment, and eventually to an open-ended entitlement. As the legislative cycle advanced, each branch's position, as

well as its actions and responses to the other, intensified. It was the legislative branch, not the executive, that ultimately dictated the pace and form of this important policy change.

When Congress quickly mandated a permanent benefit despite the executive branch's concerns that the program was premature and costly, it gambled on an untested and expensive policy that is extraordinarily difficult to revise due to its traits as an entitlement. Chapter six details the implications of this decision. Of the more notable implications, TRICARE-for-Life yields a low return on investment due to its high costs and overall small effect on achieving manpower goals. TRICARE-for-Life belongs to the category of least effective compensation tools for increasing the supply of manpower. Traditionally, noncash, deferred benefits have limited utility in retaining troops during the first half of their careers and a very small effect on attracting new recruits. Furthermore, troops do not value the TRICARE-for-Life benefit commensurate with the amount of funding required to provide it. The program has cost over \$10 billion in mandatory spending in some years, yet only 17 percent of the force will reach retirement and qualify for it.

These costs contribute to the sizable growth in military personnel accounts over the last fifteen years. Of course, the entire defense budget has experienced cost growth since 2000. What makes the increase in military compensation accounts alarming is the rapid increase in the cost per service member. Because the size of the force has decreased slightly yet the cost to compensate service members has grown by roughly half, military forces are less affordable, posing a policy dilemma in which military capabilities are forfeited to accommodate costs.

These strategic implications are further pronounced because TRICARE-for-Life is a military entitlement. In other words, it is a statutory obligation that the government disburses a future benefit to any military retiree that meets the eligibility requirements. Military entitlements are previous claims on government resources and must be satisfied before all other claims can be fulfilled. Hence, there are opportunity costs associated with congressionally mandated military entitlements as well as other entrenched pay and benefits that this dissertation calls “quasi-entitlements.” Because entitlements are fixed in law, the president is powerless to change them. The legislature is the only body capable of adjusting entitlements, but with their political sensitivity, Congress’ freedom to act is somewhat limited. The many strategic implications of the TRICARE-for-Life legislation demonstrate the real but underappreciated effect of congressional influence in defense policymaking.

Chapter seven builds on the findings in chapters five and six as well as additional interview data to formulate conclusions about Congress’ role in military personnel policymaking. The dissertation concludes that, at least in this particular area of defense policymaking, the legislative branch does not defer, abdicate, or act ambivalent, as some scholars argue. Instead, it commands. Congress exercises its power in three noteworthy ways. First, it takes direct action to pursue its policy agenda, often over the objections of DOD and the executive. Second, it liberally uses its lawmaking authority to put in statute detailed policies, including military entitlements, thereby achieving its desired policies, ensuring the longevity of those policies, and acting as the gatekeeper for future changes.

Third, congressionally mandated military personnel policies, and especially compensation, often result in budgetary implications that alter broader defense policy.

Additionally chapter seven offers several observations about the nature of Congress' involvement in military personnel policymaking. First, it clarifies that while the case of TRICARE-for-Life is replete with conflict between the branches, on average, inter-branch relations are both adversarial and collaborative. Many interview respondents emphasized the respectful and productive relationship of the congressional defense committees and DOD. When contributing to the field, this dissertation seeks to accurately portray the nuances of the executive-legislative relationship.

A second observation is that there are distinctions within the direct methods of congressional action that are overlooked in the literature. This research shows there are two pillars of direct action: initiating policy and prohibiting it, both of which can be powerful methods of congressional action. This gives proper importance to the legislative branch's actions to prohibit policy, which it does when it legislates bans on executive branch activity and when it denies, even silently, the president's budget requests and legislative proposals. Most important, this dissertation develops a new concept called "military entitlements" that is arguably the most powerful form of direct action because of its enduring implications.

Finally, chapter seven also provides insights into the nature of legislators' involvement in military personnel policy. Members of Congress typically are interested in high-profile social issues that capture national attention or distributive policies pertaining to compensation that affect their constituents. Additionally, their perspective

and approach differs from the executive branch. Because of its institutional traits, Congress usually operates incrementally, with a near-term focus and a limited scope, making comprehensive policy reform difficult.

In closing, many analysts and DOD officials have called for reform of military pay and benefits because of the policy dilemma described at the opening of this chapter. Yet, as will be explained throughout this dissertation, the nature of military entitlements makes them resistant to change. Persuading Congress to reduce or retract military benefits has proven difficult. Nonetheless, since the legislature leads in military compensation and because military entitlements cannot be altered without amending the underlying program law, Congress has and will continue to play an important part in this public policy area.

This dissertation contributes to public policy by preparing practitioners for ongoing attempts to reform military compensation, a congressionally driven policy area. To aid policymakers outside the legislative branch in their collaboration with Congress, this dissertation presents critical information about Congress' methods of making policy and style of interaction with the executive.



## **II. INSIGHTS FROM PREVIOUS SCHOLARSHIP**

This chapter highlights the existing scholarship directly relevant to the dissertation's research. The dissertation studies the struggle for power between the legislative and executive branches in defense policymaking. It examines how Congress and the executive interacted on the TRICARE-for-Life policy since its establishment in 2000 and evaluates the effects of congressional action on TFL on broader defense budgets and policies. Accordingly, the literature on Congress and national security, military personnel compensation, and entitlements informs this research.

This chapter summarizes the scholarship on the struggle for power in national security and identifies the gaps in the literature that have led to a limited interpretation of Congress' relative influence. Congress is particularly active in military personnel policy and frequently legislates substantive policy changes. By not analyzing this area of defense policy, the field omits some of the strongest evidence of congressional influence in national security policymaking. This dissertation aids in developing a more nuanced and complete understanding of congressional power through its research on congressional assertiveness within military compensation policy and forms of direct congressional action, namely military entitlements and prohibiting action, not present in the literature.

The chapter also reviews current research relating to military compensation policies, including the purpose of military pay and benefits, the various forms of

compensation, and the effectiveness of the different compensation types in meeting the military's manpower objectives. This material is useful in identifying TRICARE-for-Life as a deferred, noncash benefit and assessing the policy's usefulness for recruiting and retention. Finally, the chapter presents the literature on entitlements, a concept not included in the field of Congress and national security but, nonetheless, critically important to the subject of congressionally mandated military pay and benefits. The chapter conveys the literature's basic definition of a conventional entitlement, describes the defining and traditional characteristics of entitlements, and summarizes recent theories on how entitlements operate and their spending patterns. This dissertation offers the Congress and national security field a new concept, "military entitlements," which borrows heavily from the scholarship on entitlements presented below.

### **Congress and National Security**

The general academic consensus in the field of Congress and national security is that Congress does not exercise its full constitutional authorities relating to national security and often defers to the president on strategic defense issues. However, there are several gaps within this literature. With regard to the literature on Congress' activity within each type of defense policy, the field does not consider Congress' role in military personnel policymaking. Congress' actions to expand military compensation are an important example of a structural policy with strategic implications. Additionally, when scholars describe the methods the legislative branch uses, they do not fully account for some of the more powerful congressional methods of action like "military entitlements"

and prohibitions of policy. Consequently, the literature misses important aspects of actual congressional power. This dissertation will help close these gaps.

The following sections summarize the scholarship on the legislative branch's level of influence in defense policymaking. The general academic consensus is that Congress has ceded a great deal of influence in defense policymaking to the president in the post-WWII era. Of course, legislators' participation in national security policymaking is highly nuanced and varies by time period, method of action, and type of defense policy. The following sections elaborate on these three factors. The sections on the three categories of defense policy (crisis, strategic, and structural) and the two methods of action (direct and indirect) define these concepts and explain the relative power of the president and Congress in each category. The dissertation used this framework of methods of action and types of defense policy to organize the research design.

### **Congress' Fluctuating, Yet Diminished Level of Involvement**

Scholars generally agree that Congress' degree of influence in national security policymaking has varied throughout history, but since WWII it has diminished to a level far below the president's. Much of the literature that interprets the national security authorities within the Constitution asserts that the Framers allocated more powers to Congress than the president.<sup>5</sup> However, following WWII, the legislative branch's level of

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<sup>5</sup> Arthur M. Schlesinger Jr., *The Imperial Presidency*, Popular Library Edition (New York: The Atlantic Monthly Company by arrangement with Houghton Mifflin Company, 1974), 15; James M. Lindsay, "Deference and Defiance: The Shifting Rhythms of Executive-Legislative Relations in Foreign Policy," *Presidential Studies Quarterly* 33, no. 3 (September 2003): 531; Louis Fisher, *Presidential War Power*, 2 rev. (Lawrence: The University Press of Kansas, 2004); David S. Friedman, "Waging War against Checks

participation in national security policymaking lessened. Scholars tend to attribute Congress' diminution, in most part, to presidential initiative and congressional inaction. Several changing conditions including advanced technologies and the hastened pace of events contributed to the centralization of power in the executive. Beyond these conditions, however, it is widely recognized that the strong presidential prerogative became excessive.<sup>6</sup> Simultaneously, legislators further eroded their position of power through passive capitulation and direct actions. The latter includes relinquishing spending and war powers to the president, repeatedly authorizing growth in the permanent military, and legislating significant increases in the power of the military and civilian defense establishment.<sup>7</sup>

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and Balances - The Claim of an Unlimited Presidential War Power," *St. John's Law Review* 57, no. 2 (Winter 1983): 216–18; Paul E. Peterson, "The International System and Foreign Policy," in *The President, the Congress, and the Making of Foreign Policy*, ed. Paul E. Peterson (Norman: University of Oklahoma Press, 1994), 7; Louis Fisher, *Congressional Abdication on War and Spending* (College Station: Texas A&M University Press, 2000); James P. Pfiffner, "Chapter 4: The American Constitution," in *Power Play: The Bush Presidency and the Constitution* (Washington, D.C.: Brookings Institution Press, 2008).

<sup>6</sup> Schlesinger, *The Imperial Presidency*; Samuel P. Huntington, *The Common Defense: Strategic Programs in National Politics* (New York: Columbia University Press, 1969); Friedman, "Waging War against Checks and Balances - The Claim of an Unlimited Presidential War Power"; James P. Pfiffner, *Power Play: The Bush Presidency and the Constitution* (Washington, D.C.: Brookings Institution Press, 2008); James P. Pfiffner, "The Federalist and Executive Power" (annual meeting of the American Political Science Association, Washington, D.C., September 2010).

<sup>7</sup> Fisher, *Congressional Abdication on War and Spending*; Fisher, *Presidential War Power*; Christopher J. Deering, "Congress, the President, and Military Policy," *Annals of the American Academy of Political and Social Science* 499 (September 1988): 136–47; Brandon C. Prins and Bryan W. Marshall, "Congressional Support of the President: A Comparison of Foreign, Defense, and Domestic Policy Decision Making during and after the Cold War," *Presidential Studies Quarterly* 31, no. 4 (December 1, 2001): 660–78.

Many scholars believe there was a resurgence of congressional participation in the 1970s prompted by the Vietnam War and the Watergate scandal and facilitated by changes in the resources and organization of Congress. This predominant school of thought acknowledges that Congress' power remains eroded but contends that congressional actors are now less deferential to the executive. Changes in the 1970s to congressional structure, procedure, and staffing increased legislators' ability to perform robust analysis and oversight.<sup>8</sup> The growth in frequency and intensity of congressional activity can be seen in such empirical evidence as numbers of hearings, alterations to line-items in presidents' budget requests, and executive branch reporting requirements, among other things.<sup>9</sup>

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<sup>8</sup> Barry M. Blechman, *The Politics of National Security: Congress and U.S. Defense Policy* (New York: Oxford University Press, 1990); Lindsay and Ripley, "How Congress Influences Foreign and Defense Policy"; James M. Lindsay, "Congress and Defense Policy: 1961 to 1986," *Armed Forces & Society* 13, no. 3 (April 1, 1987): 371–401; Alton Frye, *A Responsible Congress: The Politics of National Security* (New York: Published for The Council on Foreign Relations [by] McGraw-Hill, 1975); Peterson, "The International System and Foreign Policy"; Robert S. Gilmour and Alexis A. Halley, "The Struggle for Control Between Congress and the Executive," in *Who Makes Public Policy?: The Struggle for Control Between Congress and the Executive*, ed. Robert S. Gilmour and Alexis A. Halley (Chatham, NJ: Chatham House Publishers, 1994), 3–19.

<sup>9</sup> Richard Isaak and Richard Wheeler, "National Defense Budgeting and Congressional Controls" (MBA thesis, Naval Postgraduate School, 2012), <http://oai.dtic.mil/oai/oai?verb=getRecord&metadataPrefix=html&identifier=ADA562844>; Ralph G. Carter, "Budgeting for Defense," in *The President, the Congress, and the Making of Foreign Policy*, ed. Paul E. Peterson (Norman: University of Oklahoma Press, 1994), 172–74; Blechman, *The Politics of National Security*, 40–43; Lindsay, "Congress and Defense Policy: 1961 to 1986," 373–75; Kenneth R. Mayer, "Policy Disputes as a Source of Administrative Controls: Congressional Micromanagement of the Department of Defense," *Public Administration Review* 53, no. 4 (August 1993): 294; James P. Pfiffner, "Congressional Oversight of Defense Management" (Congressional Defense Oversight Project of the Center for Strategic and International Studies, Washington, D.C., October 1990), 6–7.

While some recognize the importance and positive effect of this increased congressional oversight,<sup>10</sup> many question the motive, methods and implications of legislators' activity. Blechman notes that the now commonplace tendency to intervene in annual budgetary decisions is driven by parochialism and results in shortsighted choices and budgetary inefficiencies.<sup>11</sup> Schlesinger argues that Congress leverages its oversight activities to compensate for the diminution of its substantial constitutional authorities. "Having lost control of its war-making power, it turned now to the constitutional powers it still possessed—notably the power of the purse, the treaty-making power and the power of investigation."<sup>12</sup> Additionally, scholars have characterized congressional involvement in defense programs as "micromanagement"<sup>13</sup> and more akin to "fire alarms" than "police patrols," meaning Congress usually reacts to scandals and emergencies and rarely abates or precludes problems.<sup>14</sup>

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<sup>10</sup> Blechman, *The Politics of National Security*, 27; Gilmour and Halley, "The Struggle for Control Between Congress and the Executive"; Arthur MacMahon, "Reaction to the Delegation of Power: Congressional Oversight of Administration; The Power of the Purse," in *Legislative Politics U.S.A.: Congress and the Forces That Shape It*, ed. Theodore J. Lowi (Boston: Little, Brown and Company, 1962), 270–71; William C. Banks and Peter Raven-Hansen, *National Security Law and the Power of the Purse* (New York: Oxford University Press, 1994), 181.

<sup>11</sup> Blechman, *The Politics of National Security*, 27–28.

<sup>12</sup> Schlesinger, *The Imperial Presidency*, 152.

<sup>13</sup> Mayer, "Policy Disputes as a Source of Administrative Controls"; Philip J. Candreva and L. R. Jones, "Congressional Delegation of Spending Power to the Defense Department in the Post-9–11 Period," *Public Budgeting & Finance* 25, no. 4 (December 1, 2005): 1–19; Isaak and Wheeler, "National Defense Budgeting and Congressional Controls"; Carter, "Budgeting for Defense."

<sup>14</sup> Christopher J. Deering, "Alarms and Patrols: Legislative Oversight in Foreign and Defense Policy," in *Congress and the Politics of Foreign Policy*, ed. Colton C. Campbell, Nicol C. Rae, and John F. Stack Jr. (Upper Saddle River, NJ: Prentice Hall, 2003), 112–38; Norman J. Ornstein and Thomas E. Mann, "When Congress Checks Out," *Foreign Affairs* 85, no. 6 (December 2006): 68.

After 9/11, the nature of Congress' involvement in national security policymaking changed again. Many scholars portray the nature and intensity of congressional participation in national security as oscillating based on the nation's involvement in war. Usually legislators defer to the executive branch during military operations, but during post-war periods their apprehension of presidential power is restored and they engage in greater oversight. Accordingly, the post-9/11 period, particularly the several years following the commencement of the wars in Iraq and Afghanistan, consists of a typical wartime relationship: a strong executive and an overly accommodating legislature.<sup>15</sup>

It is worth noting, however, that some scholars argue the legislative and executive branches' relative power waxes and wanes based not only on world events, but also on political, legal, personal, and institutional conditions.<sup>16</sup> For example, Lindsay (2003) demonstrates how Congress' inclination to defy or defer to the president on foreign policy is a direct result of, foremost, the existence of security threats, and second, the country's perception of how well the president is handling foreign policy matters. Farrier's (2010) perspective is that the collective ambivalence among legislators fuels a

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<sup>15</sup> Thomas E. Mann and Norman J. Ornstein, *The Broken Branch: How Congress Is Failing America and How to Get It Back on Track* (New York: Oxford University Press, 2006); Ornstein and Mann, "When Congress Checks Out"; Pfiffner, *Power Play*; Andrew Rudalevige, "'The Contemporary Presidency': The Decline and Resurgence and Decline (and Resurgence?) of Congress: Charting a New Imperial Presidency," *Presidential Studies Quarterly* 36, no. 3 (September 2006): 506–24; Schlesinger, *The Imperial Presidency*, 77, 84–85, 89–90, 102–105; Roger H. Davidson and Walter J. Oleszek, *Congress and Its Members*, 10th ed (Washington, D.C.: CQ Press, 2006), 452–53.

<sup>16</sup> Jasmine Farrier, *Congressional Ambivalence: The Political Burdens of Constitutional Authority* (Lexington: University Press of Kentucky, 2010); Lindsay, "Deference and Defiance"; Rudalevige, "The Contemporary Presidency."

cyclic pattern: delegation of authority, feelings of regret, attempts to regain some control, and a return to delegation.

While the field typically characterizes Congress' level of participation in defense policymaking as fluctuating depending on conditions of the time, few scholars assign adequate importance to other variables that affect the legislature's involvement. Lindsay and Ripley, agree that the president retains most control in foreign and defense affairs and Congress is a secondary player, but argue that many scholars mistakenly overestimate the executive branch's hold on the policy process.<sup>17</sup> Lindsay and Ripley explain that the extent of Congress' contribution is largely unrecognized for two reasons. First, scholars often categorize foreign and defense policy together, making the president's leadership in crises and international affairs obscure legislators' influence in other areas of policy. Second, many academics measure influence using the introduction and enactment of substantive legislation and ignore other techniques of indirect influence.<sup>18</sup> These two factors are explained in detail below.

### **Congressional Methods of Involvement: Direct and Indirect**

Lindsay and Ripley explain that legislators affect policy not only through direct, but also indirect means. In fact, they note Congress has increasingly endeavored since the 1970s to shape national security through indirect means. "Direct" action is substantive legislation used to create or change a policy. While not explicitly stated in the literature, this dissertation interprets direct action as including congressional adjustments to

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<sup>17</sup> Lindsay and Ripley, "How Congress Influences Foreign and Defense Policy."

<sup>18</sup> Ibid., 17.



programs' funding levels. "Indirect" participation has three forms: anticipated reactions, procedural legislation, and framing opinion. "Anticipated reactions" can be defined as a method to signal to the executive branch the legislature's mood and position in the hopes that the executive branch will adjust its actions accordingly. It is a negative power that conveys to the president what policies are politically feasible.<sup>19</sup> This would include a letter to a department or agency as well as non-binding report language that accompanies a committee-passed bill. Procedural legislation differs from substantive legislation because it "...seeks to change the identity of those who participate in decision making and/or influence how decisions are made. The premise is that changing the process changes the policy."<sup>20</sup> Finally, framing opinion through speeches, talk shows, and hearings is a tool for "...changing the climate of opinion surrounding that policy."<sup>21</sup> Fundamentally, the difference between direct and indirect methods is prescription and persuasion, respectively.

When scholars note exceptions to Congress' usual deference, they typically refer to situations when legislators have employed indirect means to shape defense policy. For example, Howell and Pevehouse demonstrate that Congress under particular circumstances was able to effectively influence the president's use of force in major, though not minor, military operations between 1945 and 2000. The authors explain Congress used a variety of actions including refusing to appropriate funds for military operations, making public calls for the return of troops, expressing concern about the

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<sup>19</sup> Ibid., 25–27.

<sup>20</sup> Ibid., 28.

<sup>21</sup> Ibid., 32.

value and necessity of a mission, and otherwise shaping media coverage and consequently public opinion.<sup>22</sup> Most of these actions are indirect. Similarly, Johnson argues that most scholars' portrayal of legislative weakness in recent national security decision-making is a simplistic, insubstantial evaluation of legislators' failure to exercise their war-declaration or treaty-approval powers. His research on the Cold War demonstrates that some individual entrepreneurs capitalized on the methods and tools available to them, such as procedural actions within increasingly powerful subcommittees, to effectively challenge presidents on their foreign policies.<sup>23</sup> Finally, Kriner's research examines the executive-congressional relationship in the conduct and cessation of armed conflict. He recognizes the rarity of successful congressional legislation to compel the president to change or abandon his policies on the use of force. However, he argues Congress' real strength is in its ability to use indirect means to shape the president's policies and adjust the scope, duration, or conclusion of combat operations.<sup>24</sup>

In summary, certain scholars are careful to specify that Congress is capable of altering national security policy through subtle efforts to affect the circumstances influencing presidents' decisions. To be clear, Congress is still considered far less effective than the executive in shaping defense policy. Indirect means are a less powerful

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<sup>22</sup> William G. Howell and Jon C. Pevehouse, *While Dangers Gather: Congressional Checks on Presidential War Powers* (Princeton, NJ: Princeton University Press, 2007); William G. Howell and Jon C. Pevehouse, "Presidents, Congress, and the Use of Force," *International Organization* 59, no. 1 (Winter 2005): 213–214.

<sup>23</sup> Robert David Johnson, *Congress and the Cold War* (New York: Cambridge University Press, 2006).

<sup>24</sup> Douglas L. Kriner, *After the Rubicon: Congress, Presidents, and the Politics of Waging War* (Chicago: University Of Chicago Press, 2010).

method than direct action via substantive legislation. Congressional influence also varies by type of policy, which will be explained in the next section.

### **Types of National Security Policy: Crisis, Strategic, and Structural**

To accurately understand the complex nature of congressional involvement in defense policymaking, one must account for variables such as the different types of defense policy. By categorizing national security policy into types, scholars can isolate and analyze the government actors' motivations, actions, and relative power in each type. Through a couple of key publications in the early 1990s, Lindsay, Ripley, and to some extent Franklin build on Huntington and Lowi's previous work<sup>25</sup> and provide the field with a consistent, well-defined framework for the three types of foreign and defense policy. This framework categorizes the three types of foreign and defense policy: crisis, strategic, and structural; and explains the relative power of the president and Congress in each.

In general, the authors contend Congress is highly influential in policymaking that is concerned with the administration of resources and involves domestic stakeholders. However, Congress continues to yield to the president to respond when our national interests are threatened. Similarly, the president is mostly responsible for crafting strategic policies in foreign affairs and national defense.<sup>26</sup>

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<sup>25</sup> Huntington, *The Common Defense: Strategic Programs in National Politics*; Theodore J. Lowi, "Making Democracy Safe for the World: National Politics and Foreign Policy," in *Domestic Sources of Foreign Policy*, ed. James N. Rosenau (New York: Free Press, 1967), 295–331.

<sup>26</sup> Lindsay and Ripley, "How Congress Influences Foreign and Defense Policy," 18–22.

Crisis, strategic, and structural policy are defined as follows. “Crisis” policy is the action undertaken to address a critical situation that has erupted with no warning and “usually ... involving the use or potential use of force.”<sup>27</sup> Next, the objective of “strategic” policy is to provide the military posture, or “the basic mix of military forces and weapons systems,” for engaging with foreign nations.<sup>28</sup> Strategic policy incorporates “citizens’ ideological, ethnic, racial, or economic interests ... and invoke policy makers’ long-term attitudes and beliefs.”<sup>29</sup> Finally, “structural” policy includes “...procuring, deploying, and organizing military personnel and materiel....”<sup>30</sup> Structural decisions are decisions about resources, including weapons system contracts, contracts for supplies, the sites of military facilities, and “trade policies that affect domestic industries and workers.”<sup>31</sup> This dissertation also classifies military compensation as a structural policy, as will be explained below.

Typically, legislators’ influence over structural policymaking is substantial, principally because of the appropriations process and their interest in policy that affects local issues.<sup>32</sup> They have both the motivation and the means to take a highly involved role. However, Congress has very little control in strategic policy and virtually no influence in crisis policy.<sup>33</sup> The president leads in matters of strategic policy and

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<sup>27</sup> Ibid., 19.

<sup>28</sup> Davidson and Oleszek, *Congress and Its Members*, 460.

<sup>29</sup> Ibid.

<sup>30</sup> Randall B. Ripley and Grace A. Franklin, *Congress, the Bureaucracy, and Public Policy*, 5th ed. (Pacific Grove, CA: Brooks/Cole Publishing Co., 1991), 22–23.

<sup>31</sup> Davidson and Oleszek, *Congress and Its Members*, 456.

<sup>32</sup> Lindsay and Ripley, “How Congress Influences Foreign and Defense Policy,” 18–22; Davidson and Oleszek, *Congress and Its Members*, 454–58.

<sup>33</sup> Lindsay and Ripley, “How Congress Influences Foreign and Defense Policy,” 18–22.

monopolizes in crises. As Lindsay and Ripley point out, the three types of policy are neither exclusive nor hierarchical. A particular national security concept, like missile defense for example, can have both strategic and structural implications. Also, strategic policy does not always inform structural policy. Often structural decisions about weapons contracts dictate the nation's strategic force structure. Through these two points, Lindsay and Ripley argue that Congress is no less influential because it is stronger in structural policy than strategic policy. Because of the overlapping, nonhierarchical nature of defense and foreign policy, legislators' participation within the structural realm can greatly impact national security policy.<sup>34</sup>

### **Summary and Gaps in the Literature**

The prevailing academic consensus is that Congress does not exercise the full extent of its authority relating to national security matters. Furthermore, when it does act, it has most success with indirect methods of participation, rather than the more authoritative direct methods. Finally, legislators are more prominent and effective in structural policy because of their interests in parochial matters and role in the appropriations process. However, there are gaps in the body of literature and additional scholarship could offer important insights into Congress' involvement in defense policymaking.

First, existing research on the sharing of national security powers between the legislative and executive branches typically focuses on the use of force. The power to initiate armed conflict and conduct operations is important, but crisis policy is only a

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<sup>34</sup> Ibid., 21.

fraction of defense policy. Furthermore, when structural policy is considered, the literature appears to focus mostly on weapons acquisition and occasionally on military facilities. This neglects other subsets of structural policy. Military compensation policy, which is structural, is among the legislation that Congress passes each year but the literature does not discuss.

Additionally, Lindsay and Ripley appropriately note that the three types of defense policy are not hierarchical or exclusive. Decisions in structural policy can influence strategic and eventually even crisis policies. However, beyond noting the feasibility of this “cross-influence,” the literature does not explain how it happens or its effects on both the policies concerned or the policymaking process. This dissertation demonstrates how Congress’ actions in structural policy affect defense policy at a strategic level.

Finally, scholars have concluded that much of the control that Congress has reclaimed since the 1970s has been via indirect methods of action. What Congress lacks from the loss of its constitutionally provided direct control over national security, it makes up for in indirect influence using tools like reporting requirements, public hearings, and other forms of oversight. The literature on Congress and national security, however, does not discuss the legislature’s use of laws to require particular pay levels or benefits for military personnel. These laws are analogous to entitlements, a concept also not present in the literature. The field also neglects Congress’ prohibitions of executive policy and denials of executive requests. Finally, congressional defense committees employ a tool called “directive report language,” which sometimes is an application of

direct action<sup>35</sup> The direct participation observed in this case study does not conform to the literature's suggestion that Congress relies mostly on indirect methods to shape national security policy. Research on the use of legislated mandates for military compensation would be a good addition to scholarship on Congress' influence in national security.

### **Military Personnel Compensation**

This section explains the objective of military compensation. It also describes and categorizes the various pays and benefits: cash and noncash, immediate and deferred. Such a categorization is useful because the type of compensation usually dictates its effectiveness in meeting the military's manpower objectives. This section summarizes the research on the effect of compensation on military recruiting and retention. This dissertation identifies TRICARE-for-Life as a deferred, noncash benefit and draws from the research summarized below to evaluate TFL's manpower implications.

There are many reasons people join the military ranging from the patriotic to the pecuniary. The altruistic motives include duty, service, and patriotism. Some recruits cite experiential aspects, namely adventure and rite of passage. Other enlistees are motivated by self-improvement and see military service as a way to increase self-esteem and discipline and obtain skills for employment. Lastly, young men and women are induced by pragmatic reasons like pay, money for college, and unemployment.<sup>36</sup>

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<sup>35</sup> Directive report language is nonbinding, but usually complied with, report language that contains a direction for the executive department or agency. It usually operates like procedural legislation, a form of indirect action, but sometimes can be direct action.

<sup>36</sup> Todd Woodruff, Ryan Kelty, and David R. Segal, "Propensity to Serve and Motivation to Enlist among American Combat Soldiers," *Armed Forces & Society* 32, no. 3 (April 1, 2006): 355.

Despite the many motivations for enlistment, much of the literature indicates enlistment during the era of the All-Volunteer Force (AVF) is based increasingly on market-based motives. The concept of military service has transformed from the early days of the republic with service in militias, to the conscripted nationalized forces, and finally to the volunteer force of today. Throughout this transformation, the obligation between soldier and state has changed. David R. Segal states that it has gone from being “an obligation of citizenship in a community to being an obligation of national citizenship and, most recently, to being a job. The armed forces, in turn, have been transformed from a local to a national institution and, most recently, to an employer—perhaps...an employer of last resort.”<sup>37</sup>

Charles C. Moskos echoed the view that economic factors have overtaken citizen obligation as the prime motivator for military service when he wrote, “economic man had replaced the citizen-soldier.”<sup>38</sup> Moskos explains that upon transition to the AVF, the military establishment was treated the same as civilian systems. Filling the ranks was a science based on market principles. Specifically, the supply and demand trends of the national labor force and monetary incentives became the main factors for enlistment. The recruitment and retention necessary to supply adequate military manpower was accomplished through cash inducements, and the military relied on careerists more than single termers.<sup>39</sup>

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<sup>37</sup> David R. Segal, *Recruiting for Uncle Sam: Citizenship and Military Manpower Policy* (Lawrence: University Press of Kansas, 1989), 45.

<sup>38</sup> Charles C. Moskos, *A Call to Civic Service: National Service for Country and Community* (New York: Free Press, 1988), 44.

<sup>39</sup> *Ibid.*, 43–44.



Paul T. Hogan explains that the objective of the military personnel compensation system is to attract, motivate, retain, and manage service members' exit.<sup>40</sup> To meet these goals, the military establishes compensation policies based on the unique needs and characteristics of the organization. For example, the military is a hierarchical organization without lateral entry that attempts to manage supply and demand of military personnel through manpower policies like its retirement system.<sup>41</sup>

Military compensation today is a combination of multiple types of pay and benefits, as outlined in Table 1. Compensation is apportioned to service members in the form of cash pay and non-cash pay, each of which has specific components.

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<sup>40</sup> Paul F. Hogan, "Overview of the Current Personnel and Compensation System," in *Filling the Ranks: Transforming the U.S. Military Personnel System*, ed. Cindy Williams (Cambridge, MA: The MIT Press, 2004), 39.

<sup>41</sup> Beth J. Asch and John T. Warner, "A Theory of Military Compensation and Personnel Policy" (Santa Monica, CA: RAND Corporation, 1994).

**Table 1 Types of Military Compensation**

<b>CASH PAY</b>	<b>NONCASH PAY</b>
<b>Regular Military Compensation</b>	<b>In-Kind Benefits</b>
Basic pay	Health care for current members and dependents
Basic Allowance for Housing	Family housing and barracks
Basic Allowance for Subsistence	Subsistence in kind (i.e., dining halls)
Tax benefits	Installation services (e.g., child care, DOD-run schools, commissaries, exchanges, recreational facilities and programs)
	Educational benefits
<b>Special and Incentive (S&amp;I) Pays</b>	<b>Deferred Benefits</b>
Payment for hazardous or difficult conditions (e.g., hostile fire pay)	Retirement pay
Payment for particular duties or occupations (e.g., aviation continuation pay)	Health care for retirees and dependents
Payment for needed skills or ranks (e.g., reenlistment bonuses)	Other veterans' benefits (e.g., disability pay, educational benefits, mortgage assistance)

Service members' basic pay, or income earned based on rank and years of service, is only one part of his or her total compensation package. Other regular cash pay includes allowances for housing and food as well as the economic advantage from nontaxable portions of cash pay. In particular circumstances, military members additionally receive special and incentive (S&I) pay to encourage them to enter or continue service. Aside from purely monetary compensation, troops also receive nonmonetary benefits called noncash pay. This includes in-kind benefits, which are goods or services provided to current members for free or at subsidized prices, and deferred benefits, which comprise

retirement annuity, health care, and other benefits available at a later date to veterans, retirees, and their families.

Different types of compensation deliver varying levels of effectiveness.<sup>42</sup> For example, in-kind benefits offer reliable goods and services for military members who are frequently away from home and families that habitually relocate to often unfamiliar and remote areas. Indeed, military members' lifestyle necessitates easy access to consistent, quality services such as child care and housing. Furthermore, current troops require health and dental benefits to maintain military readiness. Similarly, deferred benefits such as retiree health care can help ensure a physically acceptable contingency force for national emergencies,<sup>43</sup> and after decades of manually rigorous and dangerous work, health care is important in caring for former service members and recognizing their service.

Conversely, noncash benefits, and particularly deferred ones, have several disadvantages. Investments in fixed on-base services do not reach the population living farther from installations and are largely unresponsive to changing military missions and force composition. In-kind benefits often are provided inefficiently by the Department of Defense (DOD), whose primary mission is not education and retail, for example. Also

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<sup>42</sup> The debate on the effectiveness and efficiency of the compensation types is summarized in Carla Tighe Murray, "Transforming In-Kind Compensation and Benefits," in *Filling the Ranks: Transforming the U.S. Military Personnel System*, ed. Cindy Williams (Cambridge, MA: The MIT Press, 2004), 189–212; Steven M. Kosiak, "Military Compensation: Requirements, Trends and Options" (Washington, D.C.: Center for Strategic and Budgetary Assessments, February 2005).

<sup>43</sup> Department of Defense, "Military Compensation Background Papers: Compensation Elements and Related Manpower Cost Items, Their Purposes and Legislative Backgrounds," 7th ed, (November 2011), 675, <http://militarypay.defense.gov/Reports/backgroundpapers.html>.

these benefits are not targeted to those who most need or want them. Moreover, noncash compensation, in general, does not allow service members to determine for themselves how to fulfill their needs.

Issues of perceived value also affect the utility of noncash benefits. First, troops cannot easily recognize the value of noncash benefits and often conclude, incorrectly, their compensation package is less than that of their civilian counterparts.<sup>44</sup> “[I]n decisions related to compensation, service members may focus only on their take-home pay. As they assess their compensation package, they might not consider the value of taxes they do not have to pay or medical copayments they are not charged.”<sup>45</sup> Second, deferred benefits received later in one’s life offer less perceived value to younger individuals due to the concept of the personal discount rate.<sup>46</sup> As such, most deferred benefits<sup>47</sup> have a minimal impact on recruitment and a small effect on retention until the

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<sup>44</sup> The DOD estimated in 2008 that when some of the military’s benefits are included with pay, 80 percent of the analogous civilian population earned less than the comparable military population. Brenda S. Farrell, “Military Personnel: Comparisons between Military and Civilian Compensation Can Be Useful, but Data Limitations Prevent Exact Comparisons,” Written Testimony before the Subcommittee on Personnel, Committee on Armed Services, Senate, 111th Cong. (Washington, D.C.: Government Accountability Office, April 28, 2010), <http://www.gao.gov/products/GAO-10-666T>.

<sup>45</sup> Congressional Budget Office, “Evaluating Military Compensation” (Washington, D.C., June 2007), 27.

<sup>46</sup> Individuals tend to value compensation received in the future much lower than the same amount received today. For a discussion on the personal discount rate, see Congressional Budget Office, “Evaluating Military Compensation”; Government Accountability Office, “Military Personnel: DOD Needs to Improve the Transparency and Reassess the Reasonableness, Appropriateness, Affordability, and Sustainability of Its Military Compensation System.” (Washington, D.C., July 2005).

<sup>47</sup> Throughout this dissertation, deferred benefits are discussed as being less effective in manpower generation than immediate benefits and cash pay. Note that the exception is education benefits, as is stated above.

tenth through twentieth years of service, when the impact is great.<sup>48</sup> The exception is education benefits, which in a study of Army and Navy recruiting was found to have higher elasticities than enlistment bonuses, but lower elasticities than military pay.<sup>49</sup> Deferred benefits available exclusively to retirees motivate only a small portion of the military because on average just 17 percent of the force serves long enough to qualify for such benefits.<sup>50</sup>

Most important, noncash benefits do not provide the same flexibility as cash benefits to reward individuals based on performance and necessary skill sets. Ultimately cash pay, and special and incentive pay in particular, can readily target the military's recruiting and retention needs. In fact, S&I pays are the most cost-effective compensation tool for dealing with supply-and-demand conditions throughout the force, as they can be adapted for specific force-management needs and can help to manage the flow of personnel throughout the manpower system.<sup>51</sup> This is critical, since compensation in the all-volunteer force is intended to aid in the supply of high-quality military forces. For all the reasons stated above, noncash compensation, particularly deferred benefits, are

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<sup>48</sup> Hogan, "Overview of the Current Personnel and Compensation System."

<sup>49</sup> John T. Warner, Curtis J. Simon, and Deborah M. Payne, "The Military Recruiting Productivity Slowdown: The Roles of Resources, Opportunity Cost and the Tastes of Youth," *Defence and Peace Economics* 14, no. 5 (October 2003): 329–42.

<sup>50</sup> Defense Business Board, "Modernizing the Military Retirement System," Report to the Secretary of Defense (Washington, D.C., October 2011), 3, <http://dbb.defense.gov/Reports.aspx>. Retirement statistics vary between officer and enlisted personnel. Forty-three percent of officers and 13 percent of enlisted troops historically qualify for retirement.

<sup>51</sup> Beth J. Asch et al., *Cash Incentives and Military Enlistment, Attrition, and Reenlistment* (Santa Monica, CA: RAND Corporation, 2010).

generally the least effective compensation tools for achieving manpower objectives, while cash pay, especially S&I pays, are the most effective.

In closing, the chief purpose of compensation is to aid the military organization in meeting its manpower goals. There are a variety of factors that cause people to serve in the military, among them patriotic duty and monetary incentives. The post-1973 all-volunteer force is motivated more by pecuniary incentives than it was in previous eras.<sup>52</sup> Now more than ever, it is important to develop the right mix of cash and noncash, immediate and deferred, pay and benefits to effectively recruit and retain the desired military force.

### **Entitlements**

This dissertation suggests the addition of “military entitlements,” of which TRICARE-for-Life is one, to the field of Congress and national security. This new concept is based significantly on traditional entitlements, the literature on which is presented in this section. The following paragraphs include scholars’ basic definition of a conventional entitlement, as well as the defining and typical characteristics of entitlements. Finally, it summarizes recent theories on how entitlements operate and their spending patterns, which are useful for understanding how military compensation that fits the entitlement criteria will function.

The conventional definition of an entitlement is an obligation established in law that requires the government to disburse a benefit to any individual or unit of government

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<sup>52</sup> Segal, *Recruiting for Uncle Sam*; Moskos, *A Call to Civic Service*.

that meets the eligibility requirements.<sup>53</sup> Because there is a legal requirement for the government to provide the benefits to any eligible claimant, legal recourse is available if payments are not received.<sup>54</sup> Furthermore, unless the underlying law is changed, these benefits are provided indefinitely.<sup>55</sup> In other words, entitlements are virtually permanent.

Two criteria of entitlements mentioned here, legal obligation to all eligible claimants and quasi-permanence, greatly affect the cost of entitlement programs and lead to other important characteristics. Specifically, entitlement spending is open-ended, or capped only by the limitations of the obligations established in the source legislation, which may not have an end date. Also, the funds spent on entitlements are the sum of benefits paid, and do not require debate in the annual budget appropriation process.<sup>56</sup> The amount of resources required to sustain an entitlement depends on the number of people collecting the benefits and the amount of benefits to which they are entitled, not agencies' management of the programs or annual appropriations bills.<sup>57</sup> As Joseph White explains, "Spending on open-ended entitlements rises or falls not because of discrete annual decisions about how much money to spend, but through the interactions of demographics, economics, and existing program law."<sup>58</sup>

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<sup>53</sup> Aaron Wildavsky and Naomi Caiden, *The New Politics of the Budgetary Process*, 5th ed. (New York: Longman, 2004), 123.

<sup>54</sup> David A. Super, "The Political Economy of Entitlement," *Columbia Law Review* 104, no. 3 (April 2004): 648–49; Joseph White, "Entitlement Budgeting vs. Bureau Budgeting," *Public Administration Review* 58, no. 6 (December 1998): 512.

<sup>55</sup> Wildavsky and Caiden, *The New Politics of the Budgetary Process*, 8.

<sup>56</sup> *Ibid.*, 7.

<sup>57</sup> Super, "The Political Economy of Entitlement," 654.

<sup>58</sup> White, "Entitlement Budgeting vs. Bureau Budgeting," 512.

Another defining characteristic is that entitlements are often highly sensitive to politics. Many entitlements affect vast numbers of Americans who rely on them to augment their personal finances. This creates great support for the continuance of these benefits. Furthermore, Allen Schick writes, “When Congress establishes an entitlement, it gives recipients a legal right to the money.... If Congress cuts payments, it not only takes money from recipients but also infringes on their perceived rights.”<sup>59</sup>

Other traditional characteristics of entitlements relate to congressional processes. First, in most cases, legislation that creates direct spending<sup>60</sup> includes permanent funding mechanisms that allow agencies to automatically obligate funds. As such, appropriations committees rarely exercise authority over direct spending, which are mostly entitlements. Conversely, authorization committees have the upper hand in determining the amount of direct spending.<sup>61</sup> Second, creating or altering entitlements is often accomplished through the congressional process of reconciliation.<sup>62</sup> The literature notes that because of the

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<sup>59</sup> Allen Schick, *The Federal Budget: Politics, Policy, Process*, 3rd ed (Washington, D.C.: Brookings Institution Press, 2007), 62.

<sup>60</sup> Direct spending is known as the budget authority, and resultant outlays, derived from authorizing legislation, not appropriations bills. Direct spending, often used interchangeably with mandatory spending, consists mostly of entitlements. Congressional Budget Office, “Direct Spending and Defense Programs,” Written Testimony before the Subcommittee on Military Personnel, Committee on Armed Services, U.S. House of Representatives, 111th Cong., 2nd Sess. (Washington, D.C.: Congressional Budget Office, March 23, 2010), 1.

<sup>61</sup> Schick, *The Federal Budget*, 60–62, 194–95; Wildavsky and Caiden, *The New Politics of the Budgetary Process*, 8.

<sup>62</sup> For background on reconciliation and 302(b) allocations, see Bill Heniff Jr. and Sandy Streeter, *Congressional Authorizations and Appropriations: How Congress Exercises the Power of the Purse through Authorizing Legislation, Appropriations Measures, Supplemental Appropriations, Earmarks, and Enforcing the Authorization-Appropriations Process* (Alexandria, VA: The Capitol Net Inc., 2010); Robert Keith, “The Budget Reconciliation Process: The Senate’s ‘Byrd Rule’” (Washington, D.C.:



nature of the reconciliation process, Congress takes action on entitlements on an irregular and unscheduled basis. Conversely, discretionary programs are subject to so-called section 302(b) allocations and are provided for annually in appropriations bills.<sup>63</sup>

### **Budgetary Effects of Entitlements**

Through close observation of how entitlements function in practice, scholars have developed theories that can be adapted to further describe entitlements and predict how they will operate. These include useful insights into the spending patterns of entitlements and how these programs are budgeted.

According to punctuated equilibrium theory, the country usually experiences stability in public policy resulting in incremental budget modifications, but occasionally these periods are punctuated by policy redirection and subsequent large-scale budget changes. These large-scale changes in public budgeting are characterized as the avalanche budget model.<sup>64</sup> Both stability and avalanches regularly occur in discretionary and direct spending. It is important to note, however, punctuation in discretionary budgets usually creates significant expansions or contractions in funding in a single year, while punctuation in mandatory spending alters the entire trajectory of the budget, the results of which are sometimes unknown for several years.<sup>65</sup> To elaborate, because

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Congressional Research Service, July 2, 2010); Schick, *The Federal Budget*; Wildavsky and Caiden, *The New Politics of the Budgetary Process*.

<sup>63</sup> Schick, *The Federal Budget*, 60–62; White, “Entitlement Budgeting vs. Bureau Budgeting,” 515.

<sup>64</sup> James L. True, “Avalanches and Incrementalism; Making Policy and Budgets in the United States,” *The American Review of Public Administration* 30, no. 1 (March 2000): 11–12.

<sup>65</sup> *Ibid.*, 14.

changes to entitlements are made by amending the underlying law, “...policy changes for mandatory spending are likely to affect the *rate* of spending rather than immediately affect the *level* of spending [emphasis added].”<sup>66</sup> Accordingly, the creation of a new entitlement or a major change in the program law that provides greater benefits or expands the group of eligible beneficiaries would cause an avalanche of additional spending. If the program law stays constant, entitlement spending is typically incremental as it reflects slowly changing demographics and economic conditions.<sup>67</sup>

Because demographics and the economy directly and often automatically impact entitlement spending, total costs cannot be known in advance. Costs depend on the amount of people that draw claims. For example, as a group of the population ages, it becomes eligible for certain benefits, or if the rate of unemployment grows, more people would be eligible for assistance. Therefore, the only way to estimate budgetary impacts of new entitlements or changes to existing entitlement programs is to use baseline projections and forecast the effects of such policy changes. Despite attempts at projections, the amount that is budgeted for entitlement spending at its onset and the amount actually spent are sometimes dissimilar.<sup>68</sup>

The risk of unknown total costs of an entitlement is growth in spending. Some scholars argue that entitlements cause budget growth because they circumvent the normal appropriations process and, consequently, annual scrutiny. W. Mark Crain and James C. Miller III found in study of states’ budget data that the increases to state government

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<sup>66</sup> Ibid., 7.

<sup>67</sup> Ibid., 12.

<sup>68</sup> Robert D. Lee Jr., Ronald W. Johnson, and Philip G. Joyce, *Public Budgeting Systems*, 8th ed. (Sudbury, MA: Jones and Bartlett Publishers, Inc., 2008), 292.

budget growth are 1.2 percent higher in states that have non-appropriated funding, such as entitlements, than states that subject everything to periodic budgeting.<sup>69</sup> Ultimately, entitlements tend to become “resistant to cuts.”<sup>70</sup>

In addition to budget growth, entitlements can also cause budgetary trade-offs among programs. Entitlements are previous claims on government spending that must be paid before all other remaining claims can be addressed. Therefore, discretionary spending is often sacrificed to accommodate mandatory spending programs.<sup>71</sup> This could pose important opportunity costs since agencies must fund the entitlement using resources from other programs.

Entitlements differ from discretionary programs not only in spending patterns but also in budgeting style. For example, the timelines and perspective associated with traditional bureau budgeting, which is the short-term incremental allocation of annual discretionary funding to agencies, is undesirable for entitlement programs. Instead, mandatory spending will affect several decades and decisions on these policies should be made based on that perspective using long-term planning.<sup>72</sup>

Additionally, entitlements, and by extension the money spent on them, are pre-established in law and, therefore, fewer options are available for budgetary gamesmanship during implementation. Specifically, budget managers have less control in entitlement budgeting than bureau budgeting. Tactics used for discretionary programs

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<sup>69</sup> W. Mark Crain and James C. Miller III, “Budget Process and Spending Growth,” *William and Mary Law Review* 31 (1990 1989): 1021–47.

<sup>70</sup> *Ibid.*, 1037.

<sup>71</sup> Wildavsky and Caiden, *The New Politics of the Budgetary Process*, 128, 131.

<sup>72</sup> White, “Entitlement Budgeting vs. Bureau Budgeting,” 511, 514.

have less impact on or are irrelevant to entitlements. Tactics used in traditional budgeting include giving less money to certain line items so program managers are forced to make do and allowing time or money to run out so program advocates compromise.<sup>73</sup>

Furthermore, greater technical expertise is required for policymakers to alter the trajectory of entitlement spending than to change spending levels in bureau budgeting. This is true because for policymakers to affect the course of entitlement spending, they must change the source law, not simply adjust funding levels up or down. For example, when asked for a change in eligibility or some other programmatic change, decision-makers must understand the future spending effects, which cannot be seen easily in the present and without technical knowledge.<sup>74</sup>

To summarize, this chapter presented the relevant literature on the inter-branch struggle for power in national security, the research on military compensation, and the theory on conventional entitlements. This existing scholarship will be a referenced throughout the dissertation as it analyzes Congress' actions on TRICARE-for-Life and military pay and benefits broadly.

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<sup>73</sup> Ibid., 515–16.

<sup>74</sup> Ibid., 517.

### **III. BACKGROUND**

Before explaining the research design or reporting the results of this project, it is necessary to provide background in three areas. To better understand the benefits landscape that Congress altered when it added TRICARE-for-Life, this chapter describes the health care offered to military beneficiaries. It first gives an overview of the TRICARE benefits available to service members, retirees, and their families, as well as the Military Health System that delivers these benefits. This familiarizes the reader with terms and concepts before discussing the case study on TFL. The chapter then recounts the healthcare benefit available to Medicare-eligible military retirees before they were granted lifelong access to TRICARE with the adoption of TRICARE-for-Life. This provides information on why retirees pursued a more generous healthcare benefit and the political pressure legislators received to deliver one.

Before focusing on one specific policy, TRICARE-for-Life, it is necessary to get a broad understanding of recent trends in military compensation policy in general. This chapter finishes by explaining the expansion of military pay and benefits in the 2000s, the strategic implications elsewhere in defense, and Congress' role in this expansion. This is important context for appreciating the legislative branch's proactive involvement in military compensation policymaking.

### **The Health Benefit Available to Military Beneficiaries**

The Department of Defense offers a healthcare benefit to eligible military beneficiaries through a program known informally as TRICARE. There are roughly 9.5 million active-duty military members, members of the Reserve Component, retired service members, and their families eligible for some form of health care through the Military Health System (MHS).<sup>75</sup> TRICARE currently comprises:

- A health maintenance organization-type plan called TRICARE Prime,
- A fee-for-service-type plan known as TRICARE Standard,
- A preferred provider organization-type plan called TRICARE Extra,
- A Medicare wrap-around policy referred to as TRICARE-for-Life,
- Non-subsidized insurance coverage for dependents under age 26 (TRICARE Young Adult),
- Purchased access to TRICARE Standard and Extra for members of the National Guard and Reserves (TRICARE Reserve Select and TRICARE Retired Reserve), and
- Other smaller variants including dental and pharmaceutical coverage.

This dissertation studies one of the above benefits, TRICARE-for-Life.

The MHS provides health services through a combination of military hospitals and clinics and civilian providers with which the DOD contracts. In common terms, the Military Health System operates like both an insurance carrier and a hospital system. The

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<sup>75</sup> Department of Defense, “Evaluation of the TRICARE Program: Access, Cost, and Quality, Fiscal Year 2015 Report to Congress,” February 28, 2015, 13, [www.health.mil/Reference-Center/Reports/2015/02/28/Evaluation-of-the-TRICARE-Program-Fiscal-Year-2015-Report-to-Congress](http://www.health.mil/Reference-Center/Reports/2015/02/28/Evaluation-of-the-TRICARE-Program-Fiscal-Year-2015-Report-to-Congress).

TRICARE program manages benefits coverage and pays claims, while the military treatment facilities (MTF) provide medical services to patients.<sup>76</sup>

The DOD offers unlimited, and in many cases free, health care to most military beneficiaries. For example, active-duty service members and their families do not pay premiums to enroll in TRICARE Prime.<sup>77</sup> Furthermore, families of active-duty troops and non-Medicare eligible retirees and their families do not pay premiums to use TRICARE Standard and Extra.<sup>78</sup> In contrast, civilians paid an average of 18 percent or 29 percent of the premium for their employment-based medical plan in 2014 (single or family coverage, respectively). Their employers paid the remaining 82 or 71 percent.<sup>79</sup>

For those who do pay premiums for military health care, many of the TRICARE fees remained stagnant for nearly two decades causing them to become highly subsidized. In the mid-1990s, the military's user fees were specified in law, which is a highly inflexible practice made more restrictive because the statute did not allow the fees to adjust with inflation until recently. From the time the program began in 1995 until 2012,

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<sup>76</sup> For more information on the history of the benefit, eligible beneficiaries, and TRICARE's components and operations, see Department of Defense, "Military Compensation Background Papers"; Military Compensation and Retirement Modernization Commission, "Interim Report"; Department of Defense, "Evaluation of the TRICARE Program: Fiscal Year 2015 Report to Congress"; "TRICARE," Defense Health Agency, accessed October 5, 2015, <http://tricare.mil/>.

<sup>77</sup> "Health Plan Costs: Prime Enrollment Fees," Defense Health Agency, accessed January 18, 2015, <http://tricare.mil/Costs/HealthPlanCosts/PrimeOptions/EnrollmentFees.aspx>.

<sup>78</sup> Defense Health Agency, "TRICARE Standard and TRICARE Extra Fact Sheet," February 2014, [http://www.tricare.mil/~media/Files/TRICARE/Publications/FactSheets/TSE\\_FS.pdf](http://www.tricare.mil/~media/Files/TRICARE/Publications/FactSheets/TSE_FS.pdf).

<sup>79</sup> Kaiser Family Foundation and Health Research & Educational Trust, "Employer Health Benefits: 2014 Annual Survey," September 2014, 82, <http://files.kff.org/attachment/2014-employer-health-benefits-survey-full-report>.

retirees under age 65 paid \$230 or \$460 per year to enroll in TRICARE Prime as an individual or family, respectively.<sup>80</sup> Because the face value of most out-of-pocket costs did not change, they lost some of their real value due to inflation.<sup>81</sup> Locking the rates for retirees' cost contributions has reduced the cost-sharing levels from the originally designed 27 percent at the start of the TRICARE program<sup>82</sup> to approximately 5 percent today.<sup>83</sup> As beneficiaries paid less in real value, the DOD was forced to pay more to cover the expenses. Without any growth in TRICARE Prime premiums for non-Medicare eligible retirees, the cost share for these retirees fell far below those of their civilian counterparts. "In 1999, military retiree premiums for TRICARE Prime represented 31 percent of the civilian HMO average; by 2014, this had fallen to only 10 percent."<sup>84</sup>

Guaranteed medical coverage for retirees is uncommon for American workers. While 98 percent of all large firms in the US offered health benefits to their workers in

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<sup>80</sup> Department of Defense, "Evaluation of the TRICARE Program: Access, Cost, and Quality, Fiscal Year 2012 Report to Congress," February 28, 2012, 7, [http://www.tricare.mil/hpae/\\_docs/TRICARE2012\\_02\\_28v5.pdf](http://www.tricare.mil/hpae/_docs/TRICARE2012_02_28v5.pdf).

<sup>81</sup> Brittany Gregerson, "Curing Military Health Care," *Armed Forces Journal*, May 2012, <http://www.armedforcesjournal.com/2012//05/10122465>.

<sup>82</sup> Department of Defense, "Overview: United States Department of Defense Fiscal Year 2015 Budget Request" (Office of the Under Secretary of Defense (Comptroller), March 2014), 5–10, [http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2015/fy2015\\_Budget\\_Request\\_Overview\\_Book.pdf](http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2015/fy2015_Budget_Request_Overview_Book.pdf). The 27% includes all program costs (the annual premium plus out-of-pocket expenses).

<sup>83</sup> Military Compensation and Retirement Modernization Commission, "Final Report" (Arlington, VA, January 2015), 103, <http://www.mcrmc.gov/public/docs/report/MCRMC-FinalReport-29JAN15-HI.pdf>. The cost shares for non-Medicare-eligible retirees were roughly 4-5% for individuals and 5-6% for families in FY14. This represents the premium cost shares, not all out-of-pocket expenses.

<sup>84</sup> *Ibid.*, 102.



2014, only 25 percent of these large firms offered health benefits to their retirees.<sup>85</sup> For a retiree to have access to an employer-provided health benefit is uncommon. What is more unusual is for that health benefit to be highly subsidized by one's former employer.

Because retirees pay merely 5 percent of the total premium for TRICARE Prime and no premium for TRICARE Standard and Extra, retirees are attracted to the Military Health System instead of using other health care available to them. 76 percent of retirees have access to a civilian medical program, but only 42 percent use the civilian program.<sup>86</sup>

Out-of-pocket costs, or copayments, coinsurance, and deductibles, that military beneficiaries pay are also far below the out-of-pocket fees that civilians pay. In fiscal year 2005, the average active duty family paid \$92 in out-of-pocket expenses, while the average civilian family in HMO plans paid \$3,193, or 30 times that amount.<sup>87</sup>

Consequently, military beneficiaries consume medical care at a higher rate than comparable civilians do.<sup>88</sup> TRICARE Prime enrollees used inpatient services 73 percent more often than civilians with HMOs during FY 2013.<sup>89</sup> Additionally, TRICARE Prime users had outpatient utilization rates that were 50 percent higher than their civilian

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<sup>85</sup> Kaiser Family Foundation and Health Research & Educational Trust, "Employer Health Benefits: 2014 Annual Survey," 38, 186.

<sup>86</sup> Todd Harrison, "The New Guns Versus Butter Debate" (Washington, D.C.: Center for Strategic and Budgetary Assessments, May 24, 2010), 5–6.

<sup>87</sup> Congressional Budget Office, "Evaluating Military Compensation," 16–17.

<sup>88</sup> Deborah Clay-Mendez, "Cash and In-Kind Compensation Policies for a Volunteer Force," in *Service to Country: Personnel Policy and the Transformation of Western Militaries*, ed. Curtis L. Gilroy and Cindy Williams (Cambridge, MA: The MIT Press, 2006), 278.

<sup>89</sup> Department of Defense, "Evaluation of the TRICARE Program: Access, Cost, and Quality, Fiscal Year 2014 Report to Congress," February 21, 2014, 74, <http://www.tricare.mil/tma/congressionalinformation/downloads/TRICARE%20Program%20Effectiveness%20%28FY%202014%29%201.pdf>.

counterparts.<sup>90</sup> This over-utilization has caused some analysts to call for adjusted cost-sharing in TRICARE.<sup>91</sup>

The comparisons to civilian health care above are included for two reasons. As seen above, the cost shares in military health care have eroded significantly over time. One way that analysts usually demonstrate this is to compare military and civilian cost-sharing. This is not to suggest that military beneficiaries should have an equivalent health care benefit to civilians, but rather to illustrate the effects of such low cost shares, which are twofold. First, when out-of-pocket costs are low, users consume more health care. This leads to over-utilization that does not necessarily improve one's health. It does, however, strain the system and, in this case, at significant expense to the government. Second, the erosion in cost-sharing has contributed to the high cost growth in the military health care program in the last 15 years. The cost to provide the military health care benefit has doubled since 2000.<sup>92</sup>

In summary, the government offers a robust and inexpensive healthcare benefit to military members and their dependents. Prior to TFL, military retirees were, in most part,

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<sup>90</sup> Ibid., 79.

<sup>91</sup> Congressional Budget Office, "Approaches to Reducing Federal Spending on Military Health Care" (Washington, D.C., January 16, 2014), <https://www.cbo.gov/publication/44993>; Maren Leed and Brittany Gregerson, "Keeping Faith: Charting a Sustainable Path for Military Compensation" (Washington, D.C.: Center for Strategic and International Studies, October 2011), <http://csis.org/publication/keeping-faith>; Lawrence J. Korb, Laura Conley, and Alex Rothman, "Restoring Tricare: Ensuring the Long Term Viability of the Military Health Care System" (Washington, D.C.: Center for American Progress, March 2011).

<sup>92</sup> Congressional Budget Office, "Growth in DoD's Budget from 2000 to 2014" (Washington, D.C., November 2014), 4. CBO reports a 101% increase in the Defense Health Program from 2000 to 2014. This excludes the Medicare Eligible Retiree Health Care Fund for TFL, which would make the cost growth greater.

excluded from this attractive system upon turning sixty-five. The following section details the policy that pertained to older retirees before 2000.

### **Health Care for Medicare-Eligible Retirees Prior to 2000**

Prior to congressional action in 2000, military retirees over the age of sixty-five obtained health care in two ways. They received medical care at military medical facilities when space and resources were available. However, as established in law, priority at military treatment facilities was given to active-duty military members and their dependents before retirees.<sup>93</sup> This “space-available” arrangement was not meant to be older retirees’ primary health coverage. Rather, it was intended that retirees would transition to the Medicare system upon turning sixty-five.<sup>94</sup>

However, a combination of Medicare and space-available access to MTFs was proving problematic for older retirees. From 1985 to 2000, the DOD significantly downsized its healthcare network, reducing the number of MTFs from 168 to 81, a 51% reduction. Thus, older retirees found it difficult to get treated at space-available MTFs at a time in their lives when they needed more services. Exacerbating the problem, the number of retirees aged sixty-five and older more than doubled between 1985 and 2000,

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<sup>93</sup> 10 U.S.C. §1074; 10 U.S.C. §1076.

<sup>94</sup> Department of Defense, “Military Compensation Background Papers,” 675, 912; Don J. Jansen and Katherine Blakeley, “Military Medical Care: Questions and Answers,” RL33537 (Washington, D.C.: Congressional Research Service, October 4, 2012), 19. Realizing that military retirees under sixty-five were left in a gap following the creation of Medicare in 1965, Congress authorized these retirees access to health care through the DOD until age sixty-five (Military Medical Benefits Amendments of 1966, Pub. L. No. 89-614). At such time, they were to participate in Medicare.

increasing from 700,000 to 1.5 million.<sup>95</sup> This led to increased demand for DOD-provided health care.

It is worth noting, however, that there has been great debate about whether retirees have a legitimate claim to free lifetime healthcare through the military medical system. Extensive legal research demonstrates that no statutory entitlement to free, lifetime, on-base health care ever existed, only permissive law that allows retirees access to military treatment facilities *if* space and services are available.<sup>96</sup> Furthermore, even if recruiters promised this benefit, DOD cannot establish such benefit without explicit authorization; only Congress holds that constitutional authority (art. I, § 8, cl. 14).<sup>97</sup> Finally, federal courts have ruled consistently that claims of promised free health care for life have no legal standing.<sup>98</sup> When summarizing the history of retirees' legal right to military-provided health care, DOD states, "medical care for retirees in military medical facilities has always been, and to this day remains, a privilege—not an absolute right, as has been assumed by many."<sup>99</sup>

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<sup>95</sup> Steve Buyer, *Hearings on National Defense Authorization Act for Fiscal Year 2001--H.R. 4205 and Oversight of Previously Authorized Programs: Hearings on Title IV--Personnel Authorizations, Title V--Military Personnel Policy, Title VI--Compensation and Other Personnel Benefits, Title VII--Health Care Provisions, Before the Military Personnel Subcommittee, Committee on Armed Services, House of Representatives*, Held February 25, 28, and March 8, 15, and 17, 2000, 106th Cong., H.A.S.C. No. 106-41 (Statement of the Chairman, Military Personnel Subcommittee, March 15), 836.

<sup>96</sup> David F. Burrelli, "Military Health Care: The Issue of 'Promised' Benefits" (Washington, D.C.: Congressional Research Service, January 19, 2006).

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*

<sup>99</sup> Department of Defense, "Military Compensation Background Papers," 675.

However, the perception pervades. Lawmakers and DOD officials alike noted an implied contract or a moral, although not legal, commitment to retirees.<sup>100</sup> One Representative argued, “I believe there is no question that today’s military retirees were promised lifetime health care. When promised this health care, our retirees were never told that at sixty-five they would be forced to leave the military health care system to join Medicare. This is simply wrong, and we must take action to ensure this government meets the commitment made to those who loyally served our nation.”<sup>101</sup>

As such, there was great interest among members of Congress to improve access to quality health care for Medicare-eligible retirees, preferably quickly. During the 106<sup>th</sup> Congress, several bills were introduced to expand coverage to older retirees, many of which had great support.<sup>102</sup> Congress passed legislation between 1997 and 2000 to

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<sup>100</sup> *Hearings on National Defense Authorization Act for Fiscal Year 2001--H.R. 4205 and Oversight of Previously Authorized Programs: Hearings on Title IV--Personnel Authorizations, Title V--Military Personnel Policy, Title VI--Compensation and Other Personnel Benefits, Title VII--Health Care Provisions, Before the Military Personnel Subcommittee, Committee on Armed Services, House of Representatives*, Held February 25, 28, and March 8, 15, and 17, 2000, 106th Cong., H.A.S.C. No. 106-41, March 15, 123–24, 178; *Department of Defense Authorization for Appropriations for Fiscal Year 2001 and the Future Years Defense Program, Part 1, Hearings Before the Committee on Armed Services, Senate*, Held February 8, 10, 29, and March 1, 7, 9, 2000, 106th Cong., S. Hrg. 106-609, pt. 1, February 8, March 1, 13, 30, 435.

<sup>101</sup> Robin Hayes, *Hearings on National Defense Authorization Act for Fiscal Year 2001--H.R. 4205 and Oversight of Previously Authorized Programs: Hearings on Title IV--Personnel Authorizations, Title V--Military Personnel Policy, Title VI--Compensation and Other Personnel Benefits, Title VII--Health Care Provisions, Before the Military Personnel Subcommittee, Committee on Armed Services, House of Representatives*, Held February 25, 28, and March 8, 15, and 17, 2000, 106th Cong., H.A.S.C. No. 106-41, March 15, 178.

<sup>102</sup> For example, see HR 2966, HR 3573, HR 3655, HR 4030, S 2013, S 2087, S 2003, and S 2486. HR 2966 and HR 3573 had 290 and 305 bipartisan cosponsors, respectively. Timothy R. Richardson, “Military Healthcare Reform and Legislative Changes for FY01”

authorize four demonstration programs to test and analyze the viability of different options of enhanced health care for retirees over sixty-five. The first demo was a three-year program called “Medicare subvention” in which DOD provided health care to Medicare-eligible retirees and was reimbursed for a portion of it from the Health Care Financing Administration, the predecessor of the Center for Medicare and Medicaid Services. The second was a three-year test to provide older retirees access to the Federal Employees Health Benefits Program (FEHBP) with DOD covering the same share that the government pays for civilian participants’ premiums. Third, a two-year program known as “TRICARE Senior Supplement Demonstration” allowed TRICARE to supplement Medicare. Finally, the DOD sponsored a pharmaceutical pilot project that gave enrollees access to DOD’s mail-order pharmacy program and retail network pharmacies.<sup>103</sup> As will be reported in chapter five, these demonstration programs were underway when Congress accelerated action on military retiree health care and established the TRICARE-for-Life mandate.

### **Military Compensation Expands in the 2000s**

This section provides a brief overview of the recent expansion of military pay and benefits in the 2000s, both in health care and in compensation in general. The strategic implications for other areas of national security, as well as Congress’ part in this

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(master’s thesis, Naval Postgraduate School, 2000), 21–29, <http://www.dtic.mil/docs/citations/ADA387369>.

<sup>103</sup> Richard A. Best Jr., “Military Medical Care Services: Questions and Answers,” CRS Issue Brief IB93103 (Washington, D.C.: Congressional Research Service, January 3, 2001), 8–9.

expansion, are discussed. This is important context for appreciating the legislative branch's proactive involvement in military compensation policymaking.

Since 1999 several policy changes pertaining to cash and noncash pay have increased both the amount of compensation available and the population eligible for them. They include adjustments in annual pay, increased housing allowances, extra S&I pays, expanded health care, and additional benefits for retirees. These policy changes caused strategic implications in both the defense budget and the military's manning goals.

Related specifically to the health care benefit, the policy changes in the 2000s resulted in the expansion of eligible groups. There was a 43 percent growth in the population eligible for TRICARE over ten years. In 2000, 6.8 million people were eligible for the program. By 2010, 9.7 million people were eligible TRICARE users. Only 15 percent of the 9.7 million beneficiaries are active-duty service members. The other 85 percent are family members and retirees.<sup>104</sup> In describing the differences between the military healthcare program in 2000 and 2012, Leed and Gregerson write, "Twelve years later, almost every benefit had become available to almost every category of beneficiary, whether current active duty or Reserve (activated or inactivated), retired or retired Reservist—as well as the current, former, or surviving family members of the above."<sup>105</sup>

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<sup>104</sup> Gregerson, "Curing Military Health Care."

<sup>105</sup> Leed and Gregerson, "Keeping Faith," 18.

The expansion in pay and benefits programs overall contributed greatly to the 54 percent growth in military compensation costs since 2000.<sup>106</sup> Some argue the increased personnel compensation budget is not buying a bigger force; rather, the DOD's buying power, or what it can afford, has diminished.<sup>107</sup> Of course, many other programs in the defense budget also experienced recent cost growth. The budgetary effects of TFL and other compensation will be examined more closely in chapter six.

David Chu, the undersecretary of defense for personnel and readiness from 2001 to 2008, when much of the expansion in pay and benefits occurred, stated, "The amounts have gotten to the point where they are hurtful. They are taking away from the nation's ability to defend itself."<sup>108</sup> Former defense secretary Leon Panetta has acknowledged that these costly, yet typically sacrosanct, personnel programs are no longer safe from impending budgetary trade-offs: "The fiscal reality facing us means that we must also look at the growth of personnel costs, which are a major driver of budget growth and are, simply put, on an unsustainable course."<sup>109</sup> This looming resources challenge within the

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<sup>106</sup> The Military Personnel and Defense Health Program budgets increased 54% between FY 2000 and FY 2014 (in FY 2014 dollars). Percent increase calculated from budget data in Congressional Budget Office, "Growth in DoD's Budget from 2000 to 2014," 4.

<sup>107</sup> Leed and Gregerson, "Keeping Faith," 4.

<sup>108</sup> David Chu, quoted in Greg Jaffe, "As Benefits for Veterans Climb, Military Spending Feels Squeeze," *Wall Street Journal*, January 25, 2005, <http://webreprints.djreprints.com/1156160669825.html>.

<sup>109</sup> Leon Panetta, "Defense Priorities: Today and Tomorrow" (speech, Woodrow Wilson International Center for Scholars, Washington, D.C., October 11, 2011), <http://www.wilsoncenter.org/event/defense-priorities-today-and-tomorrow>.



defense budget pits personnel costs against spending on other programs such as weapon modernization.<sup>110</sup>

Some oppose the characterization of personnel costs as unsustainable. They argue that expanding pay and benefits in the 2000s was necessary to restore compensation that had been neglected before 2000.<sup>111</sup> One representative of this viewpoint, the Military Officers Association of America, asserts the warnings about military personnel costs are hyperbolic: “Critics have made the same ‘sky is falling’ claims since the all-volunteer force (AVF) began 40 years ago. But the AVF has proved the cornerstone of national defense through decades of peace and war, despite pundits’ and bean-counters’ continual ‘gloom and doom’ predictions.”<sup>112</sup>

In addition to the budgetary implications, another important impact of recently expanded pay and benefits is their effect on new accessions or reenlistments. Not all pay and benefits are equally effective in recruitment and retention. As explained in chapter two, cash compensation has more advantages than noncash benefits, and current remuneration is valued higher than deferred benefits. Research generally shows that increased compensation in the 2000s helped mitigate challenges in filling the ranks amid ongoing combat operations and growth in the size of the Army and Marine Corps during

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<sup>110</sup> For an overview of this policy debate, see Harrison, “The New Guns Versus Butter Debate,” 2–3.

<sup>111</sup> Mike Hayden, “Fact or Fiction: Will Your Military Pay and Benefits ‘Break the Bank?,’” Military Officer (Military Officers Association of America, November 2012), [http://www.moaa.org/Main\\_Menu/Take\\_Action/Fact\\_vs\\_Fiction.html](http://www.moaa.org/Main_Menu/Take_Action/Fact_vs_Fiction.html).

<sup>112</sup> Ibid., 3.

that time period.<sup>113</sup> Note, however, that accession and reenlistment studies usually measure the impact of cash pays and education benefits, not all deferred or in-kind benefits.

An important factor in the recent increase in compensation is the role Congress played and the effects of its actions. Changes to the compensation system, in general, have been described as unsystematic measures taken over a period of time and without regard for how each new pay and benefit would affect the efficiency or effectiveness of the military personnel system. Congress initiated many of the most costly and least effective compensation policies of the 2000s, sometimes despite objection from the executive.<sup>114</sup> In correlation, there are generally four causes of recent military compensation cost growth: changes in the composition of the force, increases in the costs that the DOD incurred when providing a benefit, an upsurge in the amount of benefits available, and increases in users and usage rates.<sup>115</sup> Half of the four causes—expanded benefits and more generous eligibility—are associated with legislative changes. As one staff director of a congressional defense committee stated, “Particularly in the early 2000s, Congress kind of went off the deep end as we entered persistent conflict in [adding] benefits.”<sup>116</sup>

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<sup>113</sup> Asch et al., *Cash Incentives and Military Enlistment, Attrition, and Reenlistment*; Steven M. Kosiak, “Military Manpower for the Long Haul,” *Strategy for the Long Haul Series* (Washington, D.C.: Center for Strategic and Budgetary Assessments, 2008), 26.

<sup>114</sup> For example, the repeal of the REDUX retirement system that would have offered a more modest annuity, Concurrent Receipt that allows service members to collect retirement pay without an offset for veterans’ disability payments, removal of the Social Security offset for the Survivors’ Benefits Plan, and TRICARE-for-Life.

<sup>115</sup> Leed and Gregerson, “Keeping Faith,” 6.

<sup>116</sup> Respondent 18, interview by author, Washington, D.C., March 13, 2014.

To examine more closely Congress's influence in military compensation, this dissertation presents a case study on TRICARE-for-Life, a congressionally mandated health benefit available to Medicare-eligible military retirees. The following chapter presents the research design.

## **IV. RESEARCH DESIGN**

To better understand how Congress contributes to national security policymaking, add perspective to the current policy debate on military pay and benefits, and more closely examine the gaps in the literature that chapter two exposed, this dissertation presents research on an important military compensation policy: TRICARE-for-Life. The dissertation argues that Congress' policy preferences and methods of action have far reaching implications. Before presenting the research questions, this chapter explains what the TRICARE-for-Life policy is and how this dissertation categorizes it, using Lindsay and Ripley's framework on the types of defense policy and methods of congressional action. To focus the inquiry, the research questions are structured according to Lindsay and Ripley's framework. The chapter then details the methodology used and the data collected. The dissertation employs the case study approach and uses document analysis and interviews to conduct the analysis.

### **Applying Lindsay and Ripley's Framework to TRICARE-for-Life**

Deferred benefits are payments or services provided to veterans, military retirees, and their dependents at a future time. One example is TRICARE-for-Life, a policy created in 2000 that allows the military's medical system, TRICARE, to act as a second

payer for Medicare for military retirees age 65 and older.<sup>117</sup> By providing full health care coverage to older military retirees, the adoption of this policy essentially generated a new and substantial benefit to a group of former service members and their dependents.

As discussed in chapter two, Lindsay and Ripley broadened the scope of scholarship on Congress and national security by dealing with dimensions of legislative influence that had been neglected by previous scholarship. Subsequent scholars have employed their concept that the types of defense policy and method of congressional action matter when evaluating the legislative and executive branches' relative influence in defense policymaking. These two factors—types of defense policy and methods of action—serve as a useful framework for structuring my research. The following explains how TRICARE-for-Life applies to Lindsay and Ripley's concepts.

### **Types of Defense Policy**

To recap, crisis policy involves military operations and usually responds to international events that erupt without warning. Strategic policy dictates the military's force structure, or designs the basic mix of military troops and weapons for engaging with opponents. Finally, structural policy procures and organizes materiel and personnel, often through the administration of resources.

Pay and benefits for military service members was not an example discussed in the literature on the three types of defense policy. Military personnel compensation is difficult to categorize into strategic or structural policy because it has characteristics of

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<sup>117</sup> Stephen Daggett, "The Sustainability of Current Defense Plans," Written Testimony before the Committee on the Budget, House of Representatives, 111th Cong. (Washington, D.C.: Congressional Research Service, February 4, 2009), 5.

both. Like strategic policy, ideas about who should serve and how the military should be compensated for their sacrifice draws upon Americans' long-term ideological and economic interests and beliefs. Additionally, the manpower system is a critical element of force structure and contributes to fighting power. However, military compensation is, fundamentally, structural policy because the configuration of military pay and benefits essentially pertains to obtaining and organizing personnel and deals with the management and distribution of resources.

This argument is consistent with Lindsay and Ripley's point that the three types of policy are not exclusive. The authors also argue that policies are not hierarchical. Because of these two principles, decisions in the structural area can affect strategic matters. In the case of TRICARE-for-Life, my research explores the extent to which Congress' legislative changes to this structural policy caused long-term effects on widespread expectations of future benefits, the ability to maintain military end strength, and ultimately resource allocation. In other words, what are the ways in which this legislation altered strategic policy?

Two of the key features of structural policy, however, do not apply to the case of TRICARE-for-Life. The literature notes that congressional involvement in structural policy often correlates with parochial interests and Congress' role in the appropriations process. Conversely, TRICARE-for-Life applies to beneficiaries on a national, not a local, level and is a policy written into law, not determined through annual decisions on funding levels. One part of my research will focus on the second feature, or the form TRICARE-for-Life takes. This relates to methods of congressional action. The next

section argues that TRICARE-for-Life resembles an entitlement and explains the ramifications of mandating the policy via legislation.

### **Types of Congressional Action**

Again, direct action is legislation that creates or changes a substantive policy. Indirect methods of action shape but do not directly change substantive policy. Indirect actions include three types: Procedural legislation alters who participates in decision making or how decisions are made based on the premise that changing the process changes the policy. Anticipated reactions signal Congress' position to the executive in the hopes that he adjusts his actions. Finally, framing opinion is the act of making public statements with the intention of changing the public's opinion of the policy.

The dissertation analysis of congressional documents reveals both indirect and direct actions were taken to affect TRICARE-for-Life. However, the policymaking dynamics and implications of the legislature's direct action are more relevant to my research. Congress established TRICARE-for-Life in the National Defense Authorization Act for Fiscal Year 2001. As such, Congress' directive will exist until the law is changed, which gives the policy a sense of permanence. Additionally, political pressure makes it difficult to reverse or reduce obligations provided in law, because it is unpopular to deprive a group of something to which the law states they are entitled.<sup>118</sup> As part of the research on Congress' use of laws to influence the TRICARE-for-Life program, the dissertation will examine how this policy compares to entitlements. Entitlements are legally required, quasi-permanent, open-ended benefits without caps on the amount of

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<sup>118</sup> Wildavsky and Caiden, *The New Politics of the Budgetary Process*, 132.

funding required to satisfy their obligations to eligible recipients. The President's budget request and arguably even long-term national security planning have little control over these programs. The only things capable of altering their trajectory are demographics, the economy, and congressional action.<sup>119</sup> Therefore, this dissertation argues Congress' use of entitlements in national security policy would correspond with some degree of congressional influence in defense policymaking. However, scholars do not mention entitlements when writing about either the types of defense policy or Congress' involvement in national security policymaking. Nevertheless, entitlements are an important part of direct congressional action with significant implications.

### **Primary and Supporting Research Questions**

Put simply, scholars generally agree that Congress fails to utilize the full extent of its constitutional authorities and often defers to the executive in national security policymaking. However, military compensation is an important public policy issue neglected in the literature. In this policy area, Congress not only refrains from the deferential behavior or secondary status characterized in the literature, it leads.

This dissertation uses qualitative research to examine the two branches' interaction on TRICARE-for-Life and the implications of Congress' policy decisions. To analyze the inter-branch dynamics that characterized policymaking on TRICARE-for-Life and the implications of Congress' decisions, this research asks specific questions relating to both the substantive policy aspects of this case and congressional technique.

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<sup>119</sup> Wildavsky and Caiden, *The New Politics of the Budgetary Process*; Super, "The Political Economy of Entitlement"; White, "Entitlement Budgeting vs. Bureau Budgeting."



To focus the inquiry, the research questions are structured using Lindsay and Ripley's framework. In other words, the supporting questions consider the effects of a structural policy with strategic implications for defense policy, as well as the use of direct action to achieve policy change. The primary research question and three supporting research questions are presented below.

### **Primary Research Question**

**Research Question: How have Congress' disagreements with the executive on TRICARE-for-Life and subsequent legislative mandates affected broader defense policies and budgets, and what does the case indicate about Congress' role in defense policymaking?**

In answering the research question, this dissertation explores the policy-oriented impacts of Congress' decisions: the long-term budgetary implications of TRICARE-for-Life, how TRICARE-for-Life changed the standard for retiree benefits, the adjustments to the benefit that were proposed, the legislative and executive branch preferences with regard to this compensation policy, and how these policy preferences were reflected in the interaction between the branches.

The dissertation also examines the procedural-oriented aspects of this case and studies how the methods that Congress used affected the policy outcome. Specifically, it considers the direct and indirect methods, including entitlements, that legislators used to create and protect this policy.

## **Supporting Research Questions**

The following three supporting questions are organized according to Lindsay and Ripley's framework on types of defense policy and methods of congressional action. The first supporting question refers to the policy-oriented impacts of Congress' decisions. This research demonstrates that TRICARE-for-Life, a "structural" policy, may well have dictated changes in "strategic" policy. The second group relates to the procedural-oriented aspects of this case. Specifically, how did the methods Congress used affect the policy outcome?

### *Structural policy with strategic implications*

How did the TRICARE-for-Life policy, a "structural" policy, affect the "strategic" policies of the Department of Defense?

### *Direct action*

In what ways does TRICARE-for-Life resemble an entitlement and how does that impact the long-term ramifications of this benefit? How does Congress' use of an entitlement affect its relative influence in defense policymaking?

## **Hypothesis**

This dissertation argues that Congress' decisions on TRICARE-for-Life represent an assertiveness rarely noted in the literature. Both the substantive effects of the policy and the methods Congress used to create and protect the policy have significant implications for Congress' influence in defense policymaking.

Regarding my policy-oriented supporting question about the structural policy's effects on strategic policies, the research finds that Congress' legislative mandates created an expensive benefit with long-term implications. Many scholars contend Congress is most influential in structural policy and defers to the executive on matters of strategic or critical consequence. However, TRICARE-for-Life is a structural policy with lasting impacts on the military manpower system, namely cost growth and potential future budgetary trade-offs. It is possible that Congress, albeit inadvertently, altered strategic policy when it required DOD to provide medical care for older military retirees. As such, one could argue Congress does, in fact, influence strategic policy.

For the process-oriented sub-questions about Congress' use of entitlements, the research shows that Congress rejected the executive's objections regarding the cost and prematurity of TFL and established its own policy preferences in law. Obviously, the legislature is meant to pass laws, but the particulars of this case are important for three reasons. Scholars maintain that Congress' resurgence since the 1970s has been mostly through indirect rather than direct means. Yet, TRICARE-for-Life is an example of Congress' less utilized (or possibly just less noticed) direct involvement in national security policymaking. Next, the analysis shows that Congress passed TRICARE-for-Life over the formal objection of the president instead of deferring to him, which is common according to the literature. Finally, because the research indicates that TRICARE-for-Life is similar to an entitlement, only Congress can affect the policy's future.

Because the evidence supports these two hypotheses, the dissertation concludes that Congress was highly involved in establishing this particular policy. Additionally,

Congress has affected military retiree health care and other areas of defense policy on a strategic level. Finally, Congress will maintain a great amount of control in future decisions on this policy. In short, the research demonstrates that Congress has had significant involvement in national security policymaking.

### **Methodology**

Many of the researchers in the Congress and National Security field use qualitative methods to explore and interpret the highly nuanced aspects of this field. Qualitative approaches are useful for helping the researcher to decode the many political, institutional, and policy variables at play in the Congress and National Security field. Furthermore, qualitative methods are well known for their utility in understanding the “why” of the research subject. More specifically, several of the works reviewed in the Congress and National Security literature employ the case study approach and rely on document analysis and interviews.

Because of the complexity of the subject matter, the research question, and the potential sources of information available, this dissertation uses qualitative analysis to address the research question. The research design utilized the case study approach, and the data collection and analytical methods were document analysis and interviews. A variety of legislative and executive branch documents related to military benefits as well as interview data from individuals directly involved in TRICARE-for-Life were collected to conduct empirical analysis of the case. The following sections provide more information on my chosen research design and methodology.

## Case Studies and Case Selection

The case study approach was chosen because it is appropriate for the type of research question and is useful for appreciating context and understanding complex phenomena. Case studies are well suited for research that seeks to answer a “how” or “why” question about complex, contemporary social phenomena.<sup>120</sup> Yin describes a case study as “an empirical inquiry that investigates a contemporary phenomenon in depth and within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident.”<sup>121</sup> According to Gerring, “case studies often tackle subjects about which little is previously known or about which existing knowledge is fundamentally flawed.”<sup>122</sup> The approach is also particularly useful for descriptive, exploratory analysis of a single or limited number of units of a bounded phenomenon.<sup>123</sup> Additionally, case studies are also constrained in drawing causal relationships. As Gerring notes, “it is easier to conduct descriptive work than to investigate causal propositions while working in case study mode.”<sup>124</sup>

This dissertation used the case study approach to investigate *how* Congress' actions affected both defense policy and the legislature's role in defense policymaking. TRICARE-for-Life is an example of a contemporary policy that was recently created and the effects of which continue to unfold. In studying this contemporary event, unlike a

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<sup>120</sup> Robert K. Yin, *Case Study Research: Design and Methods*, 4th ed, Applied Social Research Methods Series (Los Angeles: Sage Publications, 2009), 2–13.

<sup>121</sup> *Ibid.*, 18.

<sup>122</sup> John Gerring, “What Is a Case Study and What Is It Good For?,” *American Political Science Review* 98, no. 02 (May 2004): 345.

<sup>123</sup> *Ibid.*, 342, 352. Gerring's terminology differs slightly from that used by other scholars. Others might use “cases” where Gerring uses “units.”

<sup>124</sup> *Ibid.*, 347.

historical event, one can directly observe the policy's ramifications and can access interviewees who are or were directly involved in the policy. Additionally, the research examines a policy area, military personnel compensation, that has not been fully explored in the Congress and national security field and that modifies in important ways the existing theory on how Congress operates in defense policymaking. Finally, the dissertation seeks to conduct a descriptive and exploratory inquiry of the TRICARE-for-Life case, rather than a causal one.

One criticism of the case study method is the concern that case studies offer a weak basis for generalization. However, researchers who advocate the case study approach argue case studies can, indeed, lead to generalizations. As Yin explains, "case studies, like experiments, are generalizable to theoretical propositions and not to populations or universes. In this sense, the case study, like the experiment, does not represent a 'sample,' and in doing a case study, your goal will be to expand and generalize theories (analytic generalization) and not to enumerate frequencies (statistical generalization)."<sup>125</sup> This dissertation sought to generalize the case in the context of previous academic propositions about Congress and national security policymaking, not to draw conclusions about the whole population of congressional action in this policy area.

The success of analytic generalization depends on careful consideration of case selection. One must choose a case that allows the research to examine, challenge, or build upon the theory in question. There are other potential cases, like military retirement or

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<sup>125</sup> Yin, *Case Study Research*, 15.

Concurrent Receipt, but TRICARE-for-Life is ideal for examining the research questions for several reasons. First, its costs are significant, and it is one of many programs that have contributed to the so-called unsustainable cost growth in military personnel compensation and the resultant policy dilemma of budgetary trade-offs. Second, Congress initiated this policy over the objections of the executive branch. The inter-branch debate on this policy has been contentious, providing ample communication and evidence for the document analysis. Third, it is a quintessential example of a “military entitlement.” It meets all the criteria of the basic definition of an entitlement, and it also carries other typical characteristics of entitlements like mandatory spending. Finally, there is ample data available. It was a high profile topic the year it was enacted, which provides a large amount of historical legislative documents and inter-branch communications for analysis. Also, the executive attempted to alter the policy several times since its establishment, generating data for this dissertation’s research each time. There are only a few military compensation policies that the president has repeatedly asked Congress to change. Given that the policy was enacted only fifteen years ago, it is still possible to interview many of the individuals who participated in the establishment of the policy. Additionally, because this program is accrual funded using a discrete trust fund, budgetary data is reported and readily available.<sup>126</sup> Other compensation programs are often bundled into broader budget accounts, making it nearly impossible for researchers to delineate the cost of specific benefits.

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<sup>126</sup> Accrual financing obligates DOD to pay into a trust fund the amount required to cover future costs for current beneficiaries.

## **Document Analysis**

The primary objective of the document analysis was to assess congressional methods of action, inter-branch policymaking dynamics, and the impact of TFL. The data collected included historical records pertaining to TRICARE-for-Life legislation; official statements expressing the two branches' positions on the policy; and secondary sources reporting the manpower, budgetary, and other effects of the TFL policy. For this research, 245 primary sources from the 16 years spanning 2000 to 2015 were collected and examined. Most documents were publicly available through the internet, and some were accessed through the National Archives and congressional committee records. Examples of these documents include legislative proposals the Department of Defense submitted to Congress, bills such as annual National Defense Authorization Acts and Defense Appropriations Acts, congressional committee reports, Statements of Administration Policy the President transmitted to Congress, and the Congressional Record of floor debate. Table 2 summarizes the number and type of congressional and executive records studied. Documents are grouped in broad categories: executive requests for funding or legislative authorities, legislation, executive responses to legislation, public statements, and other documents. Executive requests comprise annual budget requests and legislative proposals. Executive responses are official statements or communication to the legislative branch that convey the presidential administration's position on bills or laws. They include signing statements and Statements of Administration Policy. Documents categorized here as legislation included bills, laws, and other materials associated with the legislative process, such as committee reports,



conference reports, and Congressional Budget Office (CBO) cost estimates. Both branches made public statements, which included speeches and press releases. For the purposes of this analysis, statements at hearings and during floor debate were considered public statements instead of legislation. Other documents included a DOD memorandum on its legislative relations activities.

**Table 2 Summary of Primary Sources Evaluated**

<b>Document Type</b>	<b>Executive</b>	<b>Legislative</b>	<b>Grand Total</b>
Executive Request	137		137
Executive Response	24		24
Legislation		45	45
Other	2		2
Public Statement	4	33	37
<b>Grand Total</b>	<b>167</b>	<b>78</b>	<b>245</b>

When collecting statements or evidence of policy preferences, the analysis focused on official communiqué between the branches (e.g. hearing testimony, White House and DOD responses to legislation) rather than individual legislators’ public statements (e.g. speeches, interviews). Because the research focused on the conflict and compromise among the branches, it was more useful to evaluate documents that represent formal statements of the institutions rather than the individual preferences of members. Although it is prudent to treat Congress as a collection of 535 lawmakers with unique agendas rather than one cohesive body,<sup>127</sup> the actions of individual legislators can represent varied positions and outlier tendencies that could have misled my analysis.

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<sup>127</sup> Lindsay and Ripley, “How Congress Influences Foreign and Defense Policy,” 18.

Accordingly, the data was examined paying particular attention to evidence of endorsed activity that represents Congress' policy preferences in comparison to the executive's. This includes bills passed by committee, the House, or the Senate<sup>128</sup> as well as communication from the chairmen and ranking members of the four congressional defense committees (i.e. press releases, letters).<sup>129</sup> To clarify, bills or amendments that were introduced but not incorporated into final legislation sent to the president were not included as evidence of direct congressional action that changed the outcome of TRICARE-for-Life. Rather, such unsuccessful legislative initiatives express only the intent of some members of Congress, not the official position of Congress as a whole.

Finally, numerous secondary sources were collected that are not accounted for in Table 2 above. These materials were used to analyze the manpower, budgetary, and other policy effects of the TRICARE-for-Life benefit. Such sources included required reports DOD submitted to Congress that evaluate the program and CBO reports that examine the costs of TFL and other military compensation.

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<sup>128</sup> I am including committee-passed legislation because it generates official DOD responses. DOD and the White House officially respond to House and Senate-passed legislation as well.

<sup>129</sup> For this research, I consider committee chairmen and ranking minority members to be acting on behalf of their committees. Rule XXV of the U.S. Senate and Rule X of the U.S. House of Representatives provide the defense committees jurisdiction over national security matters and, as such, they interact with the executive on defense policy. The term "congressional defense committees" means the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives. 10 U.S.C. §101(a)(16)

## Interviews

To supplement the document analysis, I conducted limited, select semi-structured interviews with participants from Congress, DOD, and OMB. Interview data included how the TRICARE-for-Life legislation came to pass, the executive's reactions to it, congressional-executive interactions in the years following its enactment, the policymaking dynamics of the case, and the strategic effects of the policy on military manpower and defense budgeting. This interview data offers the field new evidence on the research topic.

Qualitative research interviewing is a useful addition to my research because the central focus of this method is to interpret meaning. Kvale states that interviewing, “attempts to understand the world from the subjects’ points of view, to unfold the meaning of peoples’ experiences, to uncover their lived world prior to scientific explanations.”<sup>130</sup> Of course, interpretation can be both a strength and a weakness of this method. One must be conscientious of misinterpretation, reflexivity, and lack of objectivity. Other criticisms of interviewing include its overall “unscientific” nature (compared to quantitative methods) and the practical difficulties in executing the technique.<sup>131</sup> Nevertheless, the flexibility of qualitative interviewing allowed me to

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<sup>130</sup> Steinar Kvale, *InterViews: An Introduction to Qualitative Research Interviewing* (Thousand Oaks, CA: Sage Publications, 1996), 1.

<sup>131</sup> Nigel King, “Using Interviews in Qualitative Research,” in *Essential Guide to Qualitative Methods in Organizational Research*, ed. Gillian Symon and Catherine Cassell (London: SAGE Publications, 2004), 11–23; Kvale, *InterViews*; Elliot George Mishler, *Research Interviewing: Context and Narrative* (Cambridge, MA: Harvard University Press, 1986); Helen B. Schwartzman, *Ethnography in Organizations*, *Qualitative Research Methods*, v. 27 (Newbury Park, CA: Sage Publications, 1993); James P. Spradley, *The Ethnographic Interview* (New York: Holt, Rinehart and Winston,

examine the multi-layered aspects of my research topic for a more comprehensive understanding.

The dissertation interviews provided insight into the intent and significance of Congress' actions, the communication between the branches, and the effects of the TFL policy. I interviewed individuals who either were involved in the creation of TRICARE-for-Life or worked on TFL and other military compensation policies since its adoption in 2000. By the nature of how TFL and other defense policy are developed, there are very few people who had direct involvement in the creation or subsequent protection of this policy. Consequently, there are a limited number of people who can be interviewed for firsthand information on the inter-branch dynamics of how the executive and Congress interacted on TFL. Twenty-four senior level policymakers, including a former member of Congress, a deputy secretary of defense, several under secretaries of defense, and staff directors of congressional defense committees, were interviewed. The participants were selected for their direct involvement in the TFL policy and their knowledge of this compensation policy and/or its effects on annual defense budgets. Table 3 depicts the expertise of the selected interviewees. Thirteen participants worked primarily in military personnel policy and five worked mostly in defense budgeting. Six interviewees held positions, such as a staff director of a defense committee, with responsibility for a broad range of issues.

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1979); Carol A. B. Warren, "Qualitative Interviewing," in *Handbook of Interview Research: Context & Method*, ed. Jaber F. Gubrium and James A. Holstein (Thousand Oaks, CA: Sage Publications, 2002), 83–101.

**Table 3 Expertise of Interview Participants**

Expertise	Total
Broad	6
Defense Budgeting	5
Military Personnel Policy	13
<b>Grand Total</b>	<b>24</b>

Table 4 provides summary data on the branch of government with which the interviewees affiliated over the course of their careers. More than half of the participants served in both branches of government, which provided useful insights into both environments and perspectives and aided in my evaluation comparing the two branches' agendas, methods of action, and influence. Fourteen participants worked in both the legislative and executive branches during their career. Six served solely in Congress, and four worked exclusively within the executive branch.

**Table 4 Career Affiliations of Interview Participants**

Career Affiliation	Total
<b>Legislative Branch</b>	
Congress	6
<b>Executive Branch</b>	
DOD	1
OMB	2
DOD & OMB	1
<b>Both Branches</b>	
Congress & DOD	11
DOD & CBO	3
<b>Grand Total</b>	<b>24</b>

Table 5 illustrates the participants' affiliation at the time TRICARE-for-Life was enacted in 2000. Of those interviewees who were present in government at the time of enactment, roughly equal numbers worked in the legislative and executive branches (10 and 9, respectively). Five did not work in government in 2000 but later entered or returned to government service and worked on TFL and other military compensation policies.

**Table 5 Affiliations of Interview Participants during Enactment of TRICARE-for-Life**

<b>Affiliation</b>	<b>Total</b>
Legislative Branch	10
Executive Branch	9
Not in Government	5
<b>Grand Total</b>	<b>24</b>

The following interview format and ethical considerations were followed. The interviews were semi-structured. Initial questions were followed with clarifying or additional questions, and a conversational format allowed for comfortable, free-flowing dialogue. All interviews were recorded using a digital voice recorder, as no participants declined the request to do so. Records of each interview were retained, but in order to encourage frank discussion, the respondents were promised anonymity. Accordingly, the names and identifying characteristics of interviewees are withheld from the dissertation by mutual agreement. Appendix A lists the interviews by date and location. Additionally, all statements were considered to be the personal views of the interviewees, not the official position of their current or past employers. The information gathered in the

interview process related to historical events, policymaking dynamics, and the strategic effects of military compensation policy, not the participants' personal characteristics, opinions, or behavior. Because the interviewees themselves were not the focus of the research, they were not human subjects. Thus, this research project did not require approval from the Human Subjects Review Board.<sup>132</sup>

The results of the case study are reported in the next chapter.

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<sup>132</sup> Aurali Dade, "Email Communication between Dr. James P. Pfiffner, Dissertation Committee Chair, and Dr. Aurali Dade, Assistant Vice President for Research Compliance, Office of Research Subject Protections, George Mason University," April 23, 2012.

## **V. THE LEGISLATIVE-EXECUTIVE STRUGGLE OVER TRICARE-FOR-LIFE**

During the wave of military compensation expansion in the 2000s, Congress not only refrained from the deferential behavior or secondary status characterized in the literature; it led. In the case of the development and protection of the TRICARE-for-Life policy, specifically, Congress advanced its policy agenda despite the objections of the executive. In fact, the intensity of both branches' actions increased as the legislative process progressed.

Using historical legislative documents, official communications between the branches, and interview data, this case study presents evidence that it was the legislative branch, not the executive, that ultimately dictated the pace and form of this important policy change. In the several years following the creation of TRICARE-for-Life, Congress has firmly protected this entitlement. Even today an ongoing dispute continues between the branches on the generosity of this benefit. For several years, the executive has challenged the notion of free access to the TFL benefit, and every year the legislature emphatically rejects such requested fees for TFL.

This chapter recounts how TRICARE-for-Life was established, first with a synopsis of the policy agendas of the various actors, then with a chronicle of the legislative activity and inter-branch communications that eventually resulted in the TFL benefit. It then details the executive's various efforts since 2000 to alter TFL and



Congress' rejection of these initiatives. Such data are evidence of Congress' proactive legislative style in military pay and benefits policy.

### **Creation of TRICARE-for-Life in 2000**

Several interview respondents recalled how different the circumstances were for defense policymaking in 2000 compared to today. Before recounting the creation of TRICARE-for-Life, it is essential to note the key factors that influenced policymakers' perspectives in 2000. Perhaps the most important feature of historic context, as depicted by interviewees, was the federal budget surplus at the time. By the end of 2000, White House estimates projected the surplus would reach almost \$5 trillion by 2010. Adding to the encouraging outlook was the fact that these projections continued to climb in spite of the economic downturn in the late 1990s. Such a surplus fueled policymakers' interest in expensive policies in the early 2000s, such as prescription drug coverage under Medicare and tax cuts.<sup>133</sup> With large surpluses, it was increasingly difficult to abide by the Budget Enforcement Act and its PAYGO rules. "Budget controllers cannot enforce the rules with the same zeal when money is abundant as they can when resources are tight."<sup>134</sup> This temptation was no different for legislators interested in securing a better health care benefit for Medicare-eligible military retirees.

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<sup>133</sup> Richard W. Stevenson, "10-Year Estimate of Budget Surplus Surges Once More," *The New York Times*, December 29, 2000, sec. U.S., <http://www.nytimes.com/2000/12/29/us/10-year-estimate-of-budget-surplus-surges-once-more.html>.

<sup>134</sup> Allen Schick, "A Surplus, If We Can Keep It: How the Federal Budget Surplus Happened," *Brookings Institution*, Winter 2000, <http://www.brookings.edu/research/articles/2000/12/winter-governance-schick>.

By the year 2000, the Cold War had been over for almost a decade and the Defense Department was operating in a peace dividend. “Adjusted for inflation, defense outlays were almost \$100 billion less in 1998 than they had been a decade earlier.”<sup>135</sup> Of course, policymakers did not know during consideration of TRICARE-for-Life that a year later the terrorist attacks of September 11, 2001 would begin another protracted military engagement and a consequent surge in military spending, including costs for a large number of expanded pay and benefits. Rather, in 2000 the focus in military personnel issues was an attempt to restore the erosion in military compensation that occurred in previous decades. For example, the executive branch proposed improvements to the military’s basic pay, and in 1999 Congress reversed DOD’s previous cost-conscious change to the retirement benefit for service members entering the military after 1986.<sup>136</sup>

Finally, interviewees noted institutional factors that affected the historical context. TRICARE-for-Life was enacted in 2000 during in a presidential and congressional election year. Naturally, this influenced to some degree agendas and outcomes. Furthermore, in the late 1990s the Republican Party controlled Congress and a Democratic president occupied the White House. According to one interview respondent, Republicans “were bent on showing how weak, ineffectual, and feckless the Clinton Administration was, and so they began just throwing money at problems. And the Democrats in Congress piled on because they didn’t want to be seen as weak in the next

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<sup>135</sup> Ibid.

<sup>136</sup> Kosiak, “Military Compensation: Requirements, Trends and Options”. Congress repealed the REDUX retirement system in the National Defense Authorization Act for Fiscal Year 2000, which made the retirement system more generous.

election.”<sup>137</sup> This trend of the parties one-upping each other on national security issues escalated in the 2000s with the 2004 and 2006 elections, which contributed to the pay and benefits expansion noted in chapter three.<sup>138</sup> In summation, at the time TRICARE-for-Life was considered, the budget had been balanced, the military was emerging from a peace dividend and could afford to rectify long-standing compensation issues, and partisan political forces were converging, although they were not as strong as later in the 2000s.

### **Policy Agendas**

In 2000 when Congress accelerated its efforts to address the issue of health care for military retirees aged sixty-five and older, these retirees had limited access to medical care through the Department of Defense. Some could be seen at the dwindling number of military treatment facilities on base, but many relied on Medicare. Interest groups representing this population of retirees grew vocal about the health care benefit they believed they were owed. As will be discussed below, Congress and the Clinton Administration were sympathetic but differed on how to proceed.

As explained in chapter three, in 2000 there were four demonstration programs in progress to test new policy options for delivering health care to military retirees over

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<sup>137</sup> Respondent 11, interview by author, Arlington, VA, July 17, 2014.

<sup>138</sup> Respondent 3, interview by author, Arlington, VA, April 29, 2014; Juliet Eilperin, “Democrats Fight for Veterans’ Votes; Bush Seen as Vulnerable on Key Military and Foreign Policy Questions,” *Washington Post*, December 26, 2003, final edition, sec. A, <http://www.lexisnexis.com/>; Liz Sidoti, “Troops, Families Are Focus of House Bill,” *Associated Press Online*, May 3, 2006, sec. Washington Dateline, <http://www.lexisnexis.com/>; Brian DeBose, “Pelosi, Reid Push Security Agenda; Democrat Rally Hits Bush Record,” *Washington Times*, March 30, 2006, sec. Page One, <http://www.lexisnexis.com/>.

sixty-five. The options included DOD-provided health care with reimbursements from Medicare (“Medicare subvention”), a DOD-provided supplement to Medicare, participation in the Federal Employees Health Benefits Program, and access to TRICARE’s pharmaceutical coverage. With these pilot programs underway, the executive branch’s preferred approach for dealing with the retiree healthcare challenge was to resource and execute the pilot projects, study their results, and then explore options to provide better healthcare access for older retirees. DOD understood there were problems throughout the military healthcare system, particularly in its administration and customer support. The Department of Defense sought, first, to improve care for active duty troops and their families and, then, address Medicare-eligible retirees’ access. This prioritization is evident in the fiscal year 2001 budget request, legislative proposals, and public statements.

The president’s FY 2001 defense budget request showed an interest in improving health care benefits overall, but did not pursue new programs for retirees. The Department proposed four major improvements to active duty service members’ health care, but for the sixty-five and older population, it continued its course of analysis and exploration: “The Department is studying a wide range of other improvements, including options to improve health care benefits for over-65 military retirees.”<sup>139</sup> Additionally, between February 25 and May 26, 2000, the Department of Defense transmitted to

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<sup>139</sup> Department of Defense, “Department of Defense Budget for FY 2001,” Press Release, No. 045-00 (Office of the Assistant Secretary of Defense (Public Affairs), February 7, 2000), <http://www.defense.gov/utility/printitem.aspx?print=http://www.defense.gov/Releases/Release.aspx?ReleaseID=2306>.

Congress 14 packages of legislative proposals, each with several suggested legislative provisions.<sup>140</sup> The contents of the Department's legislative proposals represent the executive's official position.<sup>141</sup> In 2000, DOD did not recommend any legislative initiatives pertaining to health care for military retirees aged sixty-five and older. The executive branch clearly intended to make great progress on healthcare in 2000, but its first concern was easing dissatisfaction among active duty beneficiaries.<sup>142</sup>

Additionally, although senior military and Defense Department officials pledged commitment to retirees during hearing testimony, they cautioned lawmakers on the substantial costs associated with any additional benefits and endorsed the pilot projects already underway. The co-chair of the Defense Medical Oversight Committee, Admiral Donald L. Pilling, testified, "We support the demonstration programs funded in the President's budget and will continue to pursue the definition and financing of a stable long-term benefit for retirees."<sup>143</sup> "We discourage any provisions to expand these

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<sup>140</sup> Department of Defense, "DOD Legislative Proposals, 106th Cong., 2nd Sess." (Office of Legislative Counsel, 2000), [http://www.dod.mil/dodgc/olc/proposals\\_old/106C\\_second.html](http://www.dod.mil/dodgc/olc/proposals_old/106C_second.html).

<sup>141</sup> It is an annual tradition for the Secretary of Defense to submit to Congress legislative proposals that enable the military to perform its national security mission, advance the President's policies, and align with the President's budget request. Department of Defense, "An Overview of DOD's Legislative Program" (Office of Legislative Counsel, March 13, 2006), <http://www.dod.mil/dodgc/olc/>.

<sup>142</sup> Tom Philpott, "Joint Chiefs Press Medical Oversight Committee for TRICARE Reforms," *Daily Press (Newport News, VA)*, October 29, 1999, Final edition, sec. Military Update.

<sup>143</sup> Donald L. Pilling, *Hearings on National Defense Authorization Act for Fiscal Year 2001--H.R. 4205 and Oversight of Previously Authorized Programs: Hearings on Title IV--Personnel Authorizations, Title V--Military Personnel Policy, Title VI--Compensation and Other Personnel Benefits, Title VII--Health Care Provisions, Before the Military Personnel Subcommittee, Committee on Armed Services, House of Representatives*, Held February 25, 28, and March 8, 15, and 17, 2000, 106th Cong.,

programs prior to the completion of congressionally required studies and reports,” the chief of staff of the Army, General Eric K. Shinseki stated.<sup>144</sup>

It is worth noting the role the military played in the debate on TFL. Overall, interaction on the policy mostly occurred between the Clinton Administration officials and congressional actors. The military expressed their opinion about the need for such a benefit, but also publicly supported the administration’s position to study the various policy options before committing to one permanent benefit. Interview participants recalled that legislators often pointed to the military’s support for older retirees’ health care as contributing to the grounds for the policy. In general, interview respondents noted that the military sometimes aligns itself with Congress against an administration’s policies. Furthermore, occasionally Congress uses the military’s requests as justification when lawmakers wish to pursue a policy unpopular with the executive.

Despite the executive branch’s preference to proceed pragmatically, most members of Congress were eager to deliver a swift solution to the issue of retiree health care. The moment was opportune. In addition to the historical context such as the national budget surplus explained above, momentum had built from earlier actions to catch up

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H.A.S.C. No. 106-41 (Statement of the Co-Chair, Defense Medical Oversight Committee, March 15), 761.

<sup>144</sup> Eric K. Shinseki, *Department of Defense Authorization for Appropriations for Fiscal Year 2001 and the Future Years Defense Program, Part 1, Hearings Before the Committee on Armed Services, Senate*, Held February 8, 10, 29, and March 1, 7, 9, 2000, 106th Cong., S. Hrg. 106-609, pt. 1 (Statement of the Chief of Staff, United States Army, March 1), 561.

military pay and benefits after decades of neglect. In the previous year, for example, Congress passed comprehensive reform of the military retirement system.<sup>145</sup>

More important, legislators were motivated by the passions of constituents and interest groups who fervently urged legislators to take immediate action. A cautious, incremental approach was unacceptable to them. One constituent confronted then-Senate Majority Leader, Trent Lott (R-MS), “[You] should be leading the fight. Instead, it is widely reported that you favor a bite-size approach to nibble by bits and pieces at the problem rather than meeting it head on.”<sup>146</sup> A retired master sergeant said, “I cannot understand why the Congress of the United States cannot understand the urgency. To us, they’re playing a game for crying out loud, and they’re playing a game with our lives.”<sup>147</sup> Influenced by this passion, many members of Congress believed military retirees who had served their country honorably were being denied the medical care they expected in the older stages of their lives. Rep. Taylor stated on the floor of the House that it was Congress’ constitutional responsibility to provide this benefit regardless of the executive not supporting it: “I am disappointed also that the administration has not been more helpful. But a reading of the Constitution will tell both of us that no money may be drawn from the Treasury except by an appropriation by Congress. Just because the administration did not help enough no way absolves us from doing our job.”<sup>148</sup>

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<sup>145</sup> National Defense Authorization Act for Fiscal Year 2000, Pub. L. No. 106-65, 113 Stat. 662 (1999).

<sup>146</sup> Quoted in Betsy Rothstein, “Sen. Lott Besieged by Angry Military Retirees,” *The Hill*, February 23, 2000.

<sup>147</sup> Quoted in *ibid.*

<sup>148</sup> *Congressional Record*, H3191 (daily ed. May 17, 2000), statement of Rep. Gene Taylor (D-MS).

## **Actions Taken**

The strong congressional interest noted in the previous section developed into a new benefit during action on the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (FY 2001 NDAA). Both the House and Senate Armed Services Committees reported out bills, H.R. 4205 and S. 2549, that included a pharmacy benefit for retirees and extended the three existing demonstration programs for retiree healthcare. The executive branch registered its concerns several times as the FY 2001 NDAA advanced through the legislative cycle and Congress grew closer to a healthcare benefit for Medicare-eligible retirees. As the legislative cycle advanced, each branch's position, as well as its actions and responses to the other, intensified. As can be seen in the evidence below, throughout the process Congress dictated the pace and form of this significant policy change.

### *Congress Takes Action*

In the House, the Armed Services Committee noted its disappointment that the President's budget included only a few of the healthcare reforms expected. "The request was notably bereft of any initiatives to improve military health care benefits available to Medicare-eligible military retirees."<sup>149</sup> The House Armed Services Committee (HASC) reported out a bill, H.R. 4205, that included a pharmacy benefit for retirees and extended the three existing demonstration programs for retiree healthcare. The House later passed

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<sup>149</sup> Committee on Armed Services, *Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001*, H. Rept. 106–616 (May 12, 2000): 381.



by a vote of 406 to 10 an amendment to extend nationwide and make permanent the TRICARE Senior Prime demonstration program, or Medicare subvention.<sup>150</sup>

Like the HASC, the Senate Armed Services Committee (SASC) extended the three demonstration programs and instituted a form of the pharmacy benefit in S. 2549, its version of the FY01 NDAA.<sup>151</sup> In similar fashion to the House, the Senate amended the bill on the floor by a vote of 96 to 1 to include a provision that would offer Medicare-eligible military retirees coverage under TRICARE.<sup>152</sup> Medicare would be the first payer for services provided, and TRICARE would reimburse for some services that Medicare does not cover. Beneficiaries would have to participate in Medicare Part B.<sup>153</sup> Due to budgetary restrictions and parliamentary points of order, the amendment only authorized coverage for two years (fiscal years 2002 and 2003). This kept the bill within the mandatory spending caps established under that year's budget resolution.<sup>154</sup>

### *The Executive Opposes the Legislation*

Initially, in response to the committee-reported version of the House measure, President Bill Clinton's Statement of Administration Policy (SAP) reiterated his administration's preference that demonstration programs be completed and studied before

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<sup>150</sup> *Congressional Record*, H3377-H3392 (daily ed. May 18, 2000), debate on amendment 727 of Rep. Gene Taylor (D-MS); H3391-H3392 (daily ed. May 18, 2000), amendment 727 agreed to, 406-10, Roll No. 207.

<sup>151</sup> Committee on Armed Services, *National Defense Authorization Act for Fiscal Year 2001*, S. Rept. 106-292 (May 12, 2000).

<sup>152</sup> *Congressional Record*, S4525-S4536, S4541-S4542, S4627 (daily ed. Jun 6-7, 2000), amendment 3173, as further modified, of Sen. John Warner (R-VA), Roll No. 117.

<sup>153</sup> Best, "Military Medical Care Services: Questions and Answers," 10-11.

<sup>154</sup> Stephen Daggett, "Appropriations for FY2001: Defense," CRS Report RL30505 (Washington, D.C.: Congressional Research Service, January 12, 2001), 15.

expanding benefits. It also noted that demonstrations should not be extended longer than one or two years. The SAP stated, “The Administration appreciates the Committee's support for allowing demonstrations to run their course and be evaluated in advance of decisions regarding expansion or permanent implementation. However, the Administration believes that the subvention demonstration should be extended only one or two years.”<sup>155</sup> Interestingly, almost immediately after receiving the SAP warning against a long-term extension, the full House accepted an amendment to H.R. 4205 to extend the Medicare subvention demonstration program nationwide and make it permanent.

In the SAP on the committee-passed S. 2549, the President maintained his position that demonstration programs must run their course and be evaluated before considering longer-term options. Referring to the SASC’s extension of the demonstration programs, “The Administration is concerned about long-term or permanent extensions or expansions ... without an evaluation.”<sup>156</sup> Just as the House did, one day after receiving its SAP, the Senate amended its bill on the floor to include a provision that would extend for two years the demonstration program that offered Medicare-eligible military retirees access to TRICARE.<sup>157</sup>

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<sup>155</sup> William J. Clinton, “Statement of Administration Policy on H.R. 4205, Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001,” May 17, 2000, <http://www.presidency.ucsb.edu/ws/?pid=74810>.

<sup>156</sup> William J. Clinton, “Statement of Administration Policy on S. 2549, National Defense Authorization Act for Fiscal Year 2001,” June 6, 2000, <http://www.presidency.ucsb.edu/ws/index.php?pid=74899>.

<sup>157</sup> *Congressional Record*, S4627, S4631 (daily ed. Jun 7, 2000), amendment 3173, as further modified, of Sen. John Warner (R-VA), Roll No. 117.

Although senators offered amendments that would have provided longer term or permanent health care coverage, the Senate was unable to adopt these amendments because they would have authorized more mandatory spending than that year's budget resolution allowed. The amendment offered by Senator John Warner (R-VA) that ultimately passed was modified from its original version to restrict the number of years the program would authorize in order to bring the bill within the constraints of the budget resolution.<sup>158</sup> Senator Tim Johnson (D-SD) also offered an extensive retiree medical program. However, his policy to allow older military retirees permanent, full access to the FEHBP violated the Budget Act.<sup>159</sup>

Once the full House and Senate acted, each converting a different demonstration project into a healthcare program for older retirees, the executive branch grew more concerned. The SAP to the committee-passed fiscal year 2001 Department of Defense Appropriations Bill conveyed disapproval of the House appropriations bill not funding the expanded and extended Medicare subvention program in the House-passed authorization bill, as well as the program's sizable costs and prematurity.<sup>160</sup> Additionally, in a letter to the Senate Armed Services Committee, Secretary of Defense William Cohen warned that congressionally initiated health benefits, "create billions of dollars of new unfunded discretionary as well as mandatory pay-as-you-go (PAYGO) costs. Unless the

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<sup>158</sup> *Congressional Record*, S4535, S4627 (daily ed. Jun 6-7, 2000), statement and amendment 3173, as further modified, of Sen. John Warner (R-VA).

<sup>159</sup> *Congressional Record*, S4620-S4633 (daily ed. Jun 7, 2000), amendment 3191 of Senator Tim Johnson (D-SD), Roll No. 118.

<sup>160</sup> William J. Clinton, "Statement of Administration Policy on H.R. 4576, Department of Defense Appropriations Bill, FY2001," June 6, 2000, <http://www.presidency.ucsb/ws/index.php?pid=74827>.

PAYGO costs of this bill are reduced or offset, its enactment could result in an across-the-board sequester of mandatory programs, including Medicare, veterans, and agricultural programs.” Regarding the expanded retiree benefits in both bills, he pleaded, “...[M]ore work is needed on these proposals before deciding which, if any, should be pursued and how to fund those without hurting our overall health care operations or other defense priorities. *I urge the Congress to proceed with caution and refrain from mandating new unfunded benefits* [emphasis added].”<sup>161</sup>

Finally, the Department of Defense also submitted an official appeal for the conferees’ consideration during the House-Senate conference on the FY01 NDAA. It argued the initiatives in the House and Senate bills were premature and costly: “The Department urges deferral of the expanded benefits for military retirees over sixty-five in Senate section 701 and House section 725 pending further evaluation and full funding of any expanded benefit.”<sup>162</sup> These executive objections had little bearing on the outcome, as the next section will demonstrate.

#### *Congress Passes TRICARE-for-Life Despite Executive’s Opposition*

Despite the executive’s official statements of reservation, the conference committee agreed to a program now commonly known as TRICARE-for-Life. The conference report on the FY01 NDAA essentially included a permanent version of the Senate floor amendment. Specifically, it amended the eligibility conditions for TRICARE

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<sup>161</sup> William Cohen, “Letter to Senator Warner, Chairman, Committee on Armed Services, Senate,” August 7, 2000.

<sup>162</sup> Department of Defense, “TRICARE Expansion of Health Care Coverage for over 65 Military Retirees,” *DOD Appeal to the FY 2001 Defense Authorization Bill*, August 31, 2000, O-70.

by removing the exclusion for individuals who are entitled to Medicare upon turning 65. In other words, it allowed individuals who are entitled to Medicare upon turning sixty-five to continue using the TRICARE system. Medicare would be the first payer for services provided, and TRICARE would supplement coverage by paying for deductibles, copayments, and other expenses not covered under Medicare. In effect, the Government would pay 100% of TFL users' medical costs in most cases.<sup>163</sup> According to the CBO cost estimate of the final conference outcome, the TFL program would cost roughly \$60 billion in mandatory spending and \$9.5 billion in discretionary spending over ten years.<sup>164</sup>

To pay for the program, the Act also included a provision establishing an accrual fund called the Department of Defense Medicare-Eligible Retiree Health Care Fund. DOD must pay into the trust fund the amount estimated to be required for the cost of future medical benefits of current military personnel and their dependents.<sup>165</sup> Because the authorizing statute for TRICARE-for-Life obligates the government to provide this program to the specified beneficiaries, and it is paid for using accrual funding, the TFL

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<sup>163</sup> Department of Defense, "2015 TRICARE for Life Cost Matrix with FY15 TRICARE Rates," 2015, [tricare.mil/~media/Files/TRICARE/Publications/PubsNotOnPubsPage/TFL\\_cost\\_matrix\\_2015.pdf](http://tricare.mil/~media/Files/TRICARE/Publications/PubsNotOnPubsPage/TFL_cost_matrix_2015.pdf); "Health Plan Costs: TRICARE For Life Costs," Defense Health Agency, accessed October 5, 2015, <http://tricare.mil/Costs/HealthPlanCosts/TFL.aspx>.

<sup>164</sup> Congressional Budget Office, "H.R. 4205, National Defense Authorization Act for Fiscal Year 2001: A Comparison of the Budgetary Effects for Two Proposals to Extend Health Care Benefits to Retirees of the Uniformed Services Who Are Age 65 and Older" (Washington, D.C., October 11, 2000), 3, <http://cbo.gov/publication/12788>.

<sup>165</sup> Daggett, "Appropriations for FY2001: Defense," 15.

program is classified as direct, or mandatory, spending.<sup>166</sup> The following chapter will explore the ramifications of designing the TFL program as an entitlement with mandatory spending.

Senator Warner, who originally offered a short-term version of the TFL program as a floor amendment to the NDAA, said during floor debate on the conference report that he always planned to have a permanent TFL program but was limited by procedural points of order under the Budget Act. “It had always been my intent to make this health care benefit permanent.... During the defense authorization conference we had an opportunity to make my retiree health care provisions permanent by converting the benefit to an entitlement and creating an accrual account in the Treasury.”<sup>167</sup> Senator Warner took the first step toward TFL during floor consideration of the SASC-passed bill with the intention of proceeding farther in conference.

There is an advantage to this approach. Conferences usually operate in an informal, agreement-oriented fashion. After reaching agreement, conference reports are treated as privileged business on the House and Senate floors, meaning that they can be brought up at any time (for example, when opponents are out of town) and cannot be amended. Conference reports are not usually rejected by the full chamber or recommitted to the conference committee because of the procedural and political incentives to reach

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<sup>166</sup> Congressional Budget Office, “Accrual Budgeting for Military Retirees’ Health Care” (Washington, D.C., March 2002).

<sup>167</sup> *Congressional Record*, S10336 (daily ed. Oct 12, 2000), statement of Sen. John Warner (R-VA).

an agreement. To not reach final agreement during conference subjects the legislation to further, very arduous and lengthy, deliberations, which ultimately could defeat the bill.<sup>168</sup>

All HASC and SASC conferees signed the conference report, signaling extensive bipartisan, bicameral support of the legislation. The House floor debate that followed was highly congratulatory of the efforts of the conferees. Representatives on the floor offered high praise for the conference agreement, singling out the TFL provision. There was almost no mention of the cost of the program or other concerns with the policy.<sup>169</sup> Representative John Spratt (D-SC), a senior member of the HASC and ranking member of the House Budget Committee, was the only legislator to caution the chamber, albeit in a vacillating manner, on spending for the program:

“I am pleased in particular with the provisions of this bill that deal [*sic*] with retiree health care.... Mr. Speaker, I am concerned, I am concerned that these provisions by shifting so much spending from discretionary to mandatory will not leave the Pentagon with any cost-containment incentives. I think that will bear our watching and oversight in the future. But on balance, we owe it to our military retirees to continue medical coverage after the age 65. It is an outrage that we have terminated it, and I strongly support these provisions to right that wrong.”<sup>170</sup>

The House overwhelmingly passed the conference report.<sup>171</sup>

In the Senate, a point of order against the conference report due to TFL’s mandatory spending was raised on the floor but ultimately waived. Senator Bob Kerrey (D-NE) led the opposition, albeit small, to TFL during the floor debate. Sen. Kerrey

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<sup>168</sup> Walter J. Oleszek, “Conference Committees,” ed. Donald C. Bacon, Roger H. Davidson, and Morton Keller, *The Encyclopedia of the United States Congress* (New York: Simon & Schuster, 1995), 454–55.

<sup>169</sup> *Congressional Record*, H9647-H9666 (daily ed. Oct 11, 2000), consideration of the conference report.

<sup>170</sup> *Congressional Record*, H9653 (daily ed. Oct 11, 2000), statement of Rep. John Spratt (D-SC).

<sup>171</sup> *Congressional Record*, H9665-H9666 (daily ed. Oct 11, 2000), conference report agreed to, 382-31, Roll No. 522.

argued the program's expense was exorbitant, the promise of free lifetime health care had been exaggerated, and the TFL policy was an admission that Medicare was an inadequate program.<sup>172</sup> Nine senators voted with Sen. Kerrey against the motion to waive the Budget Act with respect to the conference report. The senators that spoke out against the policy cited the cost. Despite the points raised in this debate, the conference report was adopted by wide margins.<sup>173</sup>

TRICARE-for-Life was signed into law on October 30, 2000.<sup>174</sup> In his signing statement, President Clinton expressed satisfaction that the NDAA included several policies to improve military compensation, but noted concern with one: TRICARE-for-Life. The president stated he agreed with the essence of Congress' intention, but had reservations about how the benefit is structured and its consequent expense. "[T]he Act provides comprehensive health care coverage to military retirees over the age of 65. Although I am concerned that the Congress fails to deal fully with the high, long-term cost of this new benefit, I am pleased overall with the way the Act supports individuals, who dedicated so much to the service of our country."<sup>175</sup> The TFL provision was one of hundreds of policies contained in the more than 500-page National Defense Authorization Act that year. Although the executive branch earlier had urged Congress to

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<sup>172</sup> *Congressional Record*, S10365–S10369 (daily ed., October 12, 2000), consideration of the conference report.

<sup>173</sup> *Congressional Record*, S10394 (daily ed. Oct 12, 2000), conference report agreed to, 90-3, Roll No. 275.

<sup>174</sup> Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. No. 106-398, 114 Stat. 1654 (2000).

<sup>175</sup> William J. Clinton, "Statement on Signing the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001," *Weekly Compilation of Presidential Documents* 36, no. 44 (October 30, 2000): 2690.



exclude the provision, the president ultimately accepted it as part of a larger package of important policies.

To summarize, the TFL policy evolved quickly from pilot programs, to a limited commitment, to eventually a permanent, nationwide entitlement. This progression occurred despite the objections of the executive. The opportune circumstances, including the national budget surplus, as well as a united commitment to improving Medicare-eligible military retiree health care encouraged the quick establishment of TRICARE-for-Life. However, it was Congress' proactive nature that propelled the policy to enactment and a permanent mandate.

### **Protection of TRICARE-for-Life After 2000**

Since the enactment of TRICARE-for-Life, Congress has acted to protect the policy. The year after TFL was established, the president requested the authority to make Medicare-eligible retirees choose between health care services provided through the Department of Veterans Affairs (VA) and TFL. Congress resolutely rejected the proposal in favor of giving retirees access to both earned benefits. Additionally, in the late 2000s and early 2010s, Presidents Bush and Obama argued, mostly unsuccessfully, for various changes in military compensation to slow cost growth. To trim the cost of providing services under TRICARE-for-Life, DOD sought TFL enrollment fees each year between 2012 and 2015 as part of the president's budget requests. Every year Congress rejected the proposals.

## Dual Coverage under TRICARE-for-Life and VA

In his management agenda for FY 2002, the president described a growing challenge with the DOD and VA healthcare systems. He argued the two systems suffer overlap, which had escalated with the implementation of TFL: “DOD’s health care system, originally designed to treat primarily younger active-duty personnel plus some under-65 retirees, has evolved to cover more beneficiaries over 65. DOD’s patient demographics are thus becoming increasingly similar to those of VA, which has been treating the over 65 population for many years.”<sup>176</sup> In response, the president pursued four initiatives to improve coordination, one of which was the statutory authority to require military retirees eligible for both TFL and VA health care to enroll in only one program.<sup>177</sup> In hearing testimony, the Secretary of the VA explained the need for this legislative change:

“The National Defense Authorization Act for Fiscal Year 2001 established a new DOD benefit for military retirees over age 64 who have Medicare coverage. These retirees will be able to use their own private doctors for free care and receive a generous drug benefit. Currently, 240 thousand of these retirees are enrolled in VA’s health care system. Our budget assumes that 27 percent of them will switch to the DOD benefit in 2002, which shifts \$235 million in VA medical liabilities to DOD. This recent legislative change underscores a critical need for better coordination between VA and DOD. The Administration is seeking legislation to ensure DOD beneficiaries who are eligible for VA medical care enroll with only one of these agencies as their health care provider. We will work with DOD to avoid duplication of services and enhance the quality and continuity of care.”<sup>178</sup>

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<sup>176</sup> George W. Bush, “The President’s Management Agenda: Fiscal Year 2002,” S/N 041–001–00568–4 (Washington, D.C.: Office of Management and Budget, 2001), 69, <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2002/mgmt.pdf>.

<sup>177</sup> Ibid.

<sup>178</sup> Anthony J. Principi, *Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations for Fiscal Year 2002, Hearings Before the Department of Veterans’ Affairs and Housing and Urban Development and Independent Agencies Subcommittee, Committee on Appropriations, Senate, Held April*

In response, both the authorization and appropriations bills not only failed to provide the requested statutory authority, but they also proactively banned the executive from implementing such a policy. Congress passed legislative language that mandated, “None of the funds provided by this Act may be used for the purpose of implementing any administrative proposal that would require military retirees to make an ‘irrevocable choice’ for any specified period of time between Department of Veterans Affairs or military health care under the new TRICARE for Life plan.”<sup>179</sup>

During floor debate on this provision, members of both parties supported the ban. Democrats explained how veterans must retain access to both systems, as they provide different services. Republicans noted that they supported the Bush Administration’s attempt to make the two systems serve beneficiaries more efficiently, but they supported the prohibition because too little information was available.<sup>180</sup> For example, one member stated, “Military retirees have devoted their lives to serving our country. We will breach our commitment if we allow the VA and the Department of Defense to simply implement their proposal that eliminates veterans' choice of providers. The truth is that these two

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25, May 2, 9, 16, and June 6, 13, 14, 2001, 107th Cong., S. Hrg. 107-442 (Statement of the Secretary of Veterans Affairs, May 2), 90.

<sup>179</sup> Committee of Conference, *Making Appropriations for the Departments Of Veterans Affairs and Housing and Urban Development, and for Sundry Independent Agencies, Boards, Commissions, Corporations, and Offices for the Fiscal Year Ending September 30, 2002, and for Other Purposes*, conference report to H.R. 2620, H. Rept. 107-272 (November 6, 2001), 48. Similar language was included in the authorization bill. See Committee of Conference, *National Defense Authorization Act for Fiscal Year 2002*, conference report to S. 1438, H. Rept. 107-333 (December 12, 2001), 159.

<sup>180</sup> *Congressional Record*, H4699 (daily ed. July 26, 2001), statements of Reps. Lane Evans (D-IL), Lynn Woolsey (D-CA), Christopher Smith (R-NJ), and James Walsh (R-NY).

systems provide very different packages of services and military retirees have earned the right to both.”<sup>181</sup>

The preceding was the first of many actions Congress took to firmly reject the president’s proposals to limit TFL. The legislature went beyond merely denying the executive’s request and instead used its lawmaking authority to prohibit it. Prohibitions are an important aspect of direct action. The next section will show how Congress used both prohibitions and silent denials to uphold its desired policy.

### **TRICARE-for-Life Enrollment Fees**

The president’s budget requests for FY 2013, FY 2014, FY 2015, and FY 2016 included an annual premium for TFL, which has been free to retirees since its creation.<sup>182</sup> The DOD described these fees as modest and advocated them by comparing TFL to “Medigap” health-care coverage, which many seniors buy to supplement Medicare.<sup>183</sup>

The TFL fees proposed in the FY 2013 budget request would have been phased in over four years, tiered according to service members’ retired pay, and indexed to medical

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<sup>181</sup> *Congressional Record*, H4699 (daily ed. July 26, 2001), statement of Rep. Lane Evans (D-IL).

<sup>182</sup> Military retirees do, however, pay an annual fee for the Medicare Part B program.

<sup>183</sup> Department of Defense, “Overview: United States Department of Defense Fiscal Year 2013 Budget Request” (Office of the Under Secretary of Defense (Comptroller), February 2012), 5–4, [http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2013/FY2013\\_Budget\\_Request\\_Overview\\_Book.pdf](http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2013/FY2013_Budget_Request_Overview_Book.pdf); Department of Defense, “Overview: United States Department of Defense Fiscal Year 2014 Budget Request” (Office of the Under Secretary of Defense (Comptroller), April 2013), 5–6, [http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2014/FY2014\\_Budget\\_Request\\_Overview\\_Book.pdf](http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2014/FY2014_Budget_Request_Overview_Book.pdf); Department of Defense, “Overview: United States Department of Defense Fiscal Year 2015 Budget Request,” 5–11.

inflation (increases in National Health Expenditures).<sup>184</sup> In the second attempt as part of the FY 2014 budget request, DOD tried a slightly different approach. First, the proposal would have applied only to future retirees, not beneficiaries already using TFL. Second, the annual fee would have been based on a percentage of the service member's retired pay up to a ceiling, with a separate ceiling for general officers. Third, the annual fee proposed in FY 2014 would have been indexed to the retiree cost of living adjustment (COLA) rather than medical inflation, which guarantees more gradual fee increases and protects military retirees from disruptions in the national healthcare market.<sup>185</sup> These adjustments were safer for beneficiaries and perhaps more tolerable to the retiree community and Congress. The FY 2015 and FY 2016 proposals again would have grandfathered existing TFL beneficiaries, based the annual TFL enrollment fees on a percentage of retirement pay, and indexed the fees to COLA.<sup>186</sup>

Congress, however, viewed the imposition of any fees at all as reducing the TFL benefit. When legislators established the TFL policy in 2000, they made known their position on cost shares. Congress believed that retirees were already paying for the benefit with their Medicare Part B premiums. They intended for the TFL program to be free of charge. In fact, the conferees instructed, "While extending

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<sup>184</sup> Department of Defense, "Overview: United States Department of Defense Fiscal Year 2013 Budget Request," 5–4.

<sup>185</sup> Department of Defense, "Overview: United States Department of Defense Fiscal Year 2014 Budget Request," 5–6.

<sup>186</sup> Department of Defense, "Overview: United States Department of Defense Fiscal Year 2015 Budget Request," 5–11; Department of Defense, "Overview: United States Department of Defense Fiscal Year 2016 Budget Request" (Office of the Under Secretary of Defense (Comptroller), February 2015), 6–12, [http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2016/FY2016\\_Budget\\_Request\\_Overview\\_Book.pdf](http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2016/FY2016_Budget_Request_Overview_Book.pdf).

TRICARE/CHAMPUS eligibility to Medicare-eligible beneficiaries, the conferees direct the Secretary of Defense to refrain from using deductibles and copayments, in recognition of their participation in Medicare Part B as a condition of participation.”<sup>187</sup>

Unsurprisingly, every year that the president requested a TFL enrollment fee, Congress rejected the proposals and the budgetary savings they would have created. As one reporter summarized at the time, “Trims to any benefits will get a cacophony of complaints from Congress.”<sup>188</sup> In the first two years, Congress not only denied the president’s request, but it also expressly forbade the DOD from taking any action to implement TFL premiums.

First, the National Defense Authorization Act for FY 2013 included a sense-of-Congress provision expressing that the unique and extraordinary demands required of a career in the military have earned retirees a quality healthcare benefit during retirement.<sup>189</sup> Of note, an earlier, House-passed draft of this sense-of-Congress provision included even stronger language. It stated, “...[C]areer members of the uniformed services and their families endure unique and extraordinary demands and make extraordinary sacrifices over the course of a 20- to 30-year career in protecting freedom for all Americans; and (2) those decades of sacrifice constitute a significant pre-paid premium for health care during a career member’s retirement that is over and above what

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<sup>187</sup> Committee of Conference, *Enactment of Provisions of H.R. 5408, The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001*, conference report to H.R. 4205, H. Rept. 106–945 (October 6, 2000), 814. Note that deductibles and copayments are one type of cost share or user fee, while annual premiums or enrollment fees, like those proposed by DOD, are a different type.

<sup>188</sup> Jeremy Herb, “Panetta to Face Three-Day Grilling on Cuts to Military,” *The Hill*, February 14, 2012.

<sup>189</sup> Pub. L. No. 112-239, §707, 126 Stat. 1801 (2013).

the member pays with money.”<sup>190</sup> Later, in the Consolidated and Further Continuing Appropriations Act of 2013, Congress prohibited the DOD from spending any appropriated funds to implement an annual fee for TFL.<sup>191</sup>

Congress repeated this moratorium the following year when the president again sought an annual TFL premium in his FY 2014 budget request.<sup>192</sup> Also in the FY 2014 legislative cycle, the authorization committee in the House formalized its objection to the DOD-recommended TFL fee. In the House Armed Services Committee’s written rationale for the committee’s FY 2014 bill, the HASC explains its position on TRICARE fees in general, which includes fees pertaining to TRICARE-for-Life:

“Committee members believe access to quality healthcare during retirement is a benefit earned through prior service to our nation. Mindful of Congress’ commitment to service members and their families, the legislation would reject proposals to increase some TRICARE fees or establish new TRICARE fees. The committee has already put TRICARE on a sustainable path through reforms enacted in several recent defense authorization acts. Those reforms connect TRICARE fee increases to retiree cost of living increases. The record of the Department of Defense in incorrectly calculating TRICARE costs and its repeated requests to transfer billions of unused dollars out of the program to cover other underfunded defense priorities raises questions about repeated claims by the Department that the Defense Health Program is unsustainable.”<sup>193</sup>

The committee clearly disagreed with the DOD’s management, particularly the funding, of the TRICARE program. It argued that by connecting the fees that non-Medicare-eligible retirees pay to the cost of living increases in retired pay the committee already addressed the growing costs of the program. It questioned DOD officials’ claims that the

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<sup>190</sup> Committee on Armed Services, *National Defense Authorization Act for Fiscal Year 2013*, H. Rept. 112-479 (May 11, 2012), 182.

<sup>191</sup> Pub. L. No. 113-6, §8128, 127 Stat. 327 (2013).

<sup>192</sup> Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, §8137, 128 Stat. 136 (2014).

<sup>193</sup> Committee on Armed Services, *National Defense Authorization Act for Fiscal Year 2014*, H. Rept. 113-102 (June 7, 2013), 7.

military health care program was growing too costly and would eventually become unaffordable.

In so doing, legislators exercised their authority over the authorizing statute and the program's resources and denied the president's request for an enrollment fee for TFL. They proactively used the power they had to alter the Department's charted course for TRICARE.

In FY 2015 and FY 2016, Congress did not authorize the introduction of annual premiums for TFL, silently refusing the president's proposal.<sup>194</sup> Committee statements made the legislative branch's prerogative clear: "The committee remains focused on making certain that the Department's cost-saving measures are centered on achieving the most efficient Military Health System possible *before* significant cost-sharing burdens are placed on TRICARE beneficiaries [emphasis added]."<sup>195</sup> Although the legislature did not continue its practice of explicitly forbidding annual fees for TFL, its inaction on the matter clearly expressed its refusal of the executive's request.

Not surprising, the president issued official objections in response to these congressional actions. In response to the FY 2013 NDAA, the president stated, "In a time when all public servants recognize the need to eliminate wasteful or duplicative spending, various sections in the Act limit the Defense Department's ability to direct scarce resources towards the highest priorities for our national security. ...[T]he

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<sup>194</sup> Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, 128 Stat. 3292 (2014); National Defense Authorization Act for Fiscal Year 2016, Pub. L. No 114-92, (2015).

<sup>195</sup> Committee on Armed Services, *National Defense Authorization Act for Fiscal Year 2015*, H. Rept. 113-446 (May 13, 2014), 162.



Department has endeavored to constrain manpower costs by recommending prudent cost sharing reforms in its health care programs. By failing to allow some of these cost savings measures, the Congress may force reductions in the overall size of our military forces.”<sup>196</sup> The president also spoke specifically about the savings Congress rejected when it denied his request to increase TRICARE fees, which includes the TFL enrollment fee. President Obama cautioned the House and Senate on their FY 2014 defense bills when he stated, “The projected FY 2014 TRICARE savings of \$902 million and \$9.3 billion through FY 2018 are essential for DOD to successfully address rising personnel costs. DOD needs these savings to balance and maintain investments for key defense priorities, especially amidst significant fiscal challenges posed by statutory spending caps. The Administration strongly urges the Congress to support the proposed TRICARE fee initiative.”<sup>197</sup> As is typical at the president’s level, communication referred to all TRICARE or compensation reform proposals in general, which includes the requested TFL enrollment fees. In each of the four years that the executive requested and the Congress denied TFL enrollment fees, the president submitted an official statement objecting to Congress’ action.<sup>198</sup>

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<sup>196</sup> Barack Obama, “Statement by the President on H.R. 4310 (the National Defense Authorization Act for Fiscal Year 2013),” Press Release (The White House (Office of the Press Secretary), January 3, 2013).

<sup>197</sup> Barack Obama, “Statement of Administration Policy on H.R. 1960, National Defense Authorization Act for FY 2014,” June 11, 2013, <http://www.presidency.ucsb.edu/ws/index.php?pid=103712>. A similar statement was issued in Barack Obama, “Statement of Administration Policy on S. 1197, National Defense Authorization Act for FY 2014,” November 18, 2013, <http://www.presidency.ucsb.edu/ws/index.php?pid=104234>.

<sup>198</sup> See, among other statements, Barack Obama, “Statement of Administration Policy on H.R. 4310, National Defense Authorization Act for FY 2013,” May 15, 2012,

Congress' actions to protect TFL against an enrollment fee demonstrate its assertiveness. In the first two years, lawmakers passed law prohibiting the introduction of a fee. In FY 2015, Congress stayed silent on the matter, effectively denying the request. The literature states direct action is action taken that affects substantive policy. However, the literature doesn't explicitly account for the absence of action that prevents substantive policy changes. These silent denials can have meaningful effects. In the case of the TFL enrollment fees, the president's budget request included a certain level of funding for the military's personnel accounts that assumed the enrollment fees would be authorized. Had they been, the government would have collected fees from beneficiaries, therefore requiring less appropriated resources to run the TFL program. By not authorizing the DOD to collect these fees, Congress reduced the planned budgetary savings that year. For example, by silently rejecting the enrollment fee for future TFL users (not existing beneficiaries) in the FY 2015 budget request, Congress forwent savings of \$750 million in FY 2015 and \$4.1 billion in the FY 2015 to FY 2019 period.<sup>199</sup> This dissertation argues that when Congress silently denies the executive's requested funding or authorities, it is a powerful form of direct action.

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<http://www.presidency.ucsb.edu/ws/index.php?pid=100875>; Barack Obama, "Statement of Administration Policy on H.R. 1960, National Defense Authorization Act for FY 2014," June 11, 2013, <http://www.presidency.ucsb.edu/ws/index.php?pid=103712>; Barack Obama, "Statement of Administration Policy on H.R. 4435, Howard P. "Buck" McKeon National Defense Authorization Act for FY 2015," May 19, 2014, <http://www.presidency.ucsb.edu/ws/index.php?pid=105336>; Barack Obama, "Statement of Administration Policy on H.R. 1735, National Defense Authorization Act for FY 2016," May 12, 2015, <http://www.presidency.ucsb.edu/ws/index.php?pid=110127>.  
<sup>199</sup> Congressional Budget Office, "Long-Term Implications of the 2015 Future Years Defense Program" (Washington, D.C., November 2014), 27. Estimates are DOD's projected savings.

## Summary

In summary, legislators progressed from expanding demos by one to two years and to a few more cites to, ultimately, a permanent and nationwide program. Along the way, the executive's official statements grew more direct in their disapproval. By the time the bills went to conference, the Secretary of Defense had argued that initiatives in the House and Senate bills were premature and costly. Specifically, he said they would create billions of dollars of new discretionary and mandatory costs and would threaten the overall healthcare program, as well as other critical defense priorities elsewhere in the budget. Congress passed TRICARE-for-Life anyway, and the implications have been significant. Congress gambled on an untested, permanent, costly program, as the next chapter will detail.

In the years following the creation of TRICARE-for-Life, Congress asserted its policy preferences many times to protect the benefit. The legislature denied several requests made over more than a decade. It also published committee statements, used Sense of Congress legislation, and passed prohibitions on funds to prevent the president from pursuing policies that Congress disagreed with. The interaction between the two branches grew strained at times, as the following excerpt demonstrates. In response to several years' budget requests that sought a technical change in the method of financing TFL, the conferees to the FY 2015 NDAA scolded the executive branch and forbade it from continuing to pursue this legislative change:

“For the last several years, the Department of Defense (DOD) has proposed legislation that, if enacted, would reduce its annual contribution to the Fund. These proposals have come as part of the administration's budget submission, and DOD continues to assume discretionary savings in its budget that are tied to enactment of these proposals, despite the fact that (1) there is no guarantee that Congress will support the proposals, and (2)

even if Congress were to support such proposals, the timing of the annual contribution to the Fund precludes DOD from realizing discretionary savings in the year of execution, unless the annual defense bill is passed and signed by the President prior to October 1st. *We find this practice of assuming savings disingenuous at worst, and short-sighted and impractical at best.* Until a method is devised for DOD to realize year-of-execution savings with respect to its contributions to the Fund, *we strongly urge DOD to cease its practice of assuming year-of-execution discretionary savings from legislative proposals that effect outlays from the Fund.* Such practice leaves DOD with military personnel funding shortfalls even if Congress supports legislative proposals that yield short-term discretionary savings [emphasis added].”<sup>200</sup>

According to Lindsay and Ripley’s concept of direct and indirect methods of participation, the case of TRICARE-for-Life exhibited instances of all types of indirect action. For example, during mark-up both the HASC and SASC altered the termination date of demonstration programs in order to attain greater retiree participation and also to foster a better evaluation. This action is characteristic of “procedural legislation.” Legislators “framed opinion” with remarks at hearings, press releases, and floor statements. Finally, the conferees utilized “anticipated reactions” when they included language in the statement of managers that directed DOD to avoid user fees when implementing TRICARE-for-Life.

Yet, it is Congress’ “direct” action—the substantive legislation—that is most consequential. The literature often states that Congress is most successful at affecting outcomes when it uses indirect means. However, Congress was particularly influential when it mandated TRICARE-for-Life and later when it denied the executive’s requests to alter it. In both instances (i.e., dual coverage under TFL and VA and TFL enrollment fees), Congress not only declined to authorize the requested policies, but it also passed

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<sup>200</sup> Committee on Armed Services, *Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015*, Legislative Text and Joint Explanatory Statement to Accompany H.R. 3979, Public Law 113–291 (in lieu of a conference report), Committee Print No. 4 (December 2014), 800.

prohibitions against them. Additionally, in the FY 2015 legislative cycle, Congress silently rejected the TFL enrollment fee. While not expressly defined in Lindsay and Ripley's work, this dissertation argues that Congress takes direct action when it rejects the president's budget requests and legislative proposals. As explained above, silent denials can have important effects on programs and budgets. A direct action taken to prohibit policy can be equally impactful as one taken to create new policy. Moreover, this particular direct action can be characterized as an entitlement, which has additional ramifications and will be discussed in the next chapter.

## VI. POLICY IMPLICATIONS OF CONGRESSIONAL ACTION

When legislators mandated a nationwide and permanent TFL benefit before the demonstration programs were complete, they essentially gambled on an untested and costly policy that is extraordinarily hard to revise due to its traits as an entitlement (to be discussed in detail below). Legislative action occurred despite the warnings of the DOD and even some in Congress.<sup>201</sup> The House Armed Services Committee, just five months before supporting the enactment of TFL, questioned the prudence of converting a pilot project into a permanent program. The HASC published in its committee report accompanying the draft FY 2001 NDAA, “Neither the Department of Defense, nor Congress, had sufficient information to move the currently running health care demonstration programs for the military Medicare-eligible beneficiaries from the demonstration to the permanent program stage.”<sup>202</sup> In hearing testimony, the Government Accountability Office (GAO) cautioned, the “demonstrations are in early stages of implementation and, so far, conclusive evidence regarding beneficiary acceptance, program cost, and the Department’s ability to adequately administer the demonstration projects has yet to be established. While these proposals offer benefits that are attractive

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<sup>201</sup> For example, as highlighted above, during Senate debate on the conference report, Senator Kerrey led a small group of senators in opposition to the TRICARE-for-Life outcome.

<sup>202</sup> Committee on Armed Services, *Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001*, H. Rept. 106–616 (May 12, 2000), 381.

to beneficiaries, they have significant cost implications and may not yield improvements in recruiting and retention.”<sup>203</sup>

In fact, the TRICARE Senior Supplement Demonstration program, which essentially was extended to a permanent and nationwide program with the creation of TRICARE-for-Life, was scheduled to start enrolling its 11,000 eligible users in March 2000 and begin offering benefits in April 2000, two months prior to the Senate adopting an amendment that authorized the first two years of TFL. This demonstration program had not likely seen any measurable results by the time TFL was enacted in October 2000. The demo was scheduled to end December 31, 2002.<sup>204</sup>

Despite these warnings, Congress proceeded with a program that some, including DOD, considered premature. Again, legislators often spoke publicly about the need to rectify immediately the Medicare-eligible retirees’ healthcare problem. In the end, what were the effects of TFL on the military healthcare system, the DOD’s manpower goals,

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<sup>203</sup> Stephen P. Backus, *Hearings on National Defense Authorization Act for Fiscal Year 2001--H.R. 4205 and Oversight of Previously Authorized Programs: Hearings on Title IV--Personnel Authorizations, Title V--Military Personnel Policy, Title VI--Compensation and Other Personnel Benefits, Title VII--Health Care Provisions, Before the Military Personnel Subcommittee, Committee on Armed Services, House of Representatives*, Held February 25, 28, and March 8, 15, and 17, 2000, 106th Cong., H.A.S.C. No. 106-41 (Statement of the Director, Veterans’ Affairs and Military Health Care Issues, Health, Education, and Human Services Division, Government Accountability Office, March 15), 1002.

<sup>204</sup> Rudy F. de Leon, Sue Bailey, and H. James Sears, *Hearings on National Defense Authorization Act for Fiscal Year 2001--H.R. 4205 and Oversight of Previously Authorized Programs: Hearings on Title IV--Personnel Authorizations, Title V--Military Personnel Policy, Title VI--Compensation and Other Personnel Benefits, Title VII--Health Care Provisions, Before the Military Personnel Subcommittee, Committee on Armed Services, House of Representatives*, Held February 25, 28, and March 8, 15, and 17, 2000, 106th Cong., H.A.S.C. No. 106-41 (Joint statement of the Under Secretary of Defense, Personnel and Readiness; Assistant Secretary of Defense, Health Affairs; and Executive Director, TRICARE Management Activity, March 15), 850.

and the defense budget? Furthermore, how do the strategic implications of congressional action on TFL alter the common perception that Congress does not influence defense policymaking in a significant way? This chapter examines the strategic policy implications of TRICARE-for-Life. It discusses TFL's effects on military health care, manpower, and defense budgets. Additionally, it details how TFL is a military entitlement and what this means for the program. Overall, TFL has had important strategic implications for national security.

### **Effects on the Military Healthcare System**

When Congress mandated TFL, it dramatically changed the landscape of the military healthcare system. Prior to 2001 and the creation of TFL, roughly 88 percent of military retirees over sixty-five used Medicare supplemental insurance or were covered by Medicaid. By 2014 this figure had dropped to 14 percent as older retirees flocked to the new military-provided benefit.<sup>205</sup> By 2014 Medicare-eligible retirees and their dependents accounted for 23 percent of eligible TRICARE users in the United States, while active-duty personnel represented only 13 percent.<sup>206</sup> All told, the DOD spends more on medical care provided to former service members and their families than to actual troops in uniform. Retirees sixty-five and older are the most expensive beneficiaries per capita and have the highest usage rates by far of any other group.<sup>207</sup> This is a result of these older retirees' healthcare needs, but also low cost-sharing. To reiterate,

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<sup>205</sup> Department of Defense, "Evaluation of the TRICARE Program: Fiscal Year 2015 Report to Congress," 98.

<sup>206</sup> Ibid., 16.

<sup>207</sup> Gregerson, "Curing Military Health Care."



when users pay low or no fees for healthcare services, utilization of those services increases. Under TRICARE-for-Life, in most cases users pay nothing for outpatient and inpatient healthcare services and very little for prescription drugs.<sup>208</sup> TFL users have a relatively low rate of coinsurance (copayments and deductibles paid per dollar of health care services utilized). In FY 2014, the coinsurance rate for TFL beneficiaries was 2.5 percent compared to 10.7 percent among their civilian counterparts. Consequently, these beneficiaries have relatively high utilization rates. They consume 26 percent more medical services than their civilian counterparts.<sup>209</sup>

At the time TRICARE-for-Life was created, there was some level of awareness among lawmakers of the relationship between cost-sharing and usage rates. The trade-off between free health care and high utilization of health services and resultant costs to the Government was not discussed extensively. However, there were a couple of instances when it was raised. Testifying before the HASC Military Personnel Subcommittee on the FY 2001 NDAA, Stephen P. Backus, the Director of Veterans' Affairs and Military Health Care Issues at GAO cautioned lawmakers that "...eliminating cost-sharing...runs counter to conventional health care cost containment strategy. Research has shown that

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<sup>208</sup> Department of Defense, "2015 TRICARE for Life Cost Matrix with FY15 TRICARE Rates"; Defense Health Agency, "Prescription Costs," accessed November 5, 2015, <http://www.tricare.mil/Costs/PrescriptionCosts.aspx>. All outpatient care except chiropractic care is covered 100 percent. Inpatient care up to 151 days and stays at skilled nursing facilities up to 101 days are fully covered. Users pay a copay for longer stays. For generic drugs, users pay \$0 at military pharmacies and through home delivery and \$8 at network pharmacies. For brand name drugs, users pay \$0 at military pharmacies, \$16 for home delivery, and \$20 at network pharmacies. Depending on the choices made when filling prescriptions, users could get prescription coverage for free.

<sup>209</sup> Department of Defense, "Evaluation of the TRICARE Program: Fiscal Year 2015 Report to Congress," 100.

the lack of cost-sharing leads to unnecessary utilization and higher costs. Virtually every other health plan that I am aware of in this country has some sort of cost-sharing.”<sup>210</sup>

Some members of Congress understood the effect of no cost-sharing.

Representative Steve Buyer (R-IN), the chairman of the HASC Personnel Subcommittee, advised future beneficiaries of the program that abuse of the free health care under TFL would result in the introduction of user fees in the future: “I am going to speak directly now to the seniors who are about to use this program. There are no co-pays and there are no deductibles. If the utilization rates get out of whack, we are going to come back here and impose co-pays and deductibles. They have been extended by this Congress as an earned yet generous benefit. Do not abuse it.”<sup>211</sup> However, Rep. Buyer’s intention to introduce out-of-pocket costs in the future is unlikely to occur. It is difficult for Congress to make such a change given the policy’s characteristics of an entitlement, which will be discussed later in this chapter.

Rep. Buyer later spoke publicly about the difficulty in introducing fees to the benefit. He acknowledged it was a mistake to exclude cost containment in the TFL program design during a 2013 public hearing of the Military Compensation and Retirement Modernization Commission on which he served as a commissioner. “I made a huge error in the creation of TRICARE for Life, and that was I trusted future congresses, that they would do the oversight and make the necessary increases and adjustments of the

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<sup>210</sup> Backus, *Hearings on National Defense Authorization Act for Fiscal Year 2001 Before the Military Personnel Subcommittee, Committee on Armed Services, House of Representatives*, 822.

<sup>211</sup> *Congressional Record*, H9651 (daily ed. October 11, 2000), statement of Rep. Steve Buyer (R-IN).

program. ... I remember vividly in the discussions about cost containment about whether [user fees] should be indexed...” He went on to describe that he never expected in 2000 to be embroiled in a several-year war during which any attempt to increase premiums would be challenging for the force and difficult to accomplish.<sup>212</sup>

Despite the fact that an absence of cost-sharing yields over-utilization and higher costs for the DOD, the FY 2001 NDAA conferees provided instructions in the accompanying statement of managers that established a clear commitment to free health care for Medicare-eligible retirees: “While extending TRICARE/CHAMPUS eligibility to Medicare-eligible beneficiaries, the conferees direct the Secretary of Defense to refrain from using deductibles and copayments, in recognition of their participation in Medicare Part B as a condition of participation.”<sup>213</sup> The conferees’ use of the word “direct” is important because it gives the statement greater force. This is a unique category of report language called “directive report language” (DRL) that the congressional defense committees use to prompt DOD to take an action. While it is not legally binding, DOD usually complies with DRL to avoid subsequent, more serious congressional action. DRL is discussed in chapter seven as a type of direct action previously overlooked in the literature.

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<sup>212</sup> Steve Buyer, *Public Hearing Before the Military Compensation and Retirement Modernization Commission*, Held November 5, 2013, Arlington, VA (Statement of Commissioner, Military Compensation and Retirement Modernization Commission), 285–86, accessed September 22, 2015, [http://www.mcrmc.gov/public/docs/meetings/20131105/Transcript\\_Nov\\_5.pdf](http://www.mcrmc.gov/public/docs/meetings/20131105/Transcript_Nov_5.pdf).

<sup>213</sup> Committee of Conference, *Enactment of Provisions of H.R. 5408, The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001*, conference report to H.R. 4205, H. Rept. 106–945 (October 6, 2000), 814. The conferees’ statement refers to premiums for Medicare Part B.

With the enactment of TFL, there was a dramatic increase in the number of people drawing on military health care and the DOD's healthcare budget. With virtually no out-of-pocket costs, users have no incentive to make rational choices about their healthcare usage, further driving up the costs to taxpayers. Nevertheless, these functional issues seem slight to the program's proponents who believe this is a promised benefit with recruiting advantages. The next section explores the extent to which TFL aids recruiting and retention.

### **Manpower Implications**

In some hearing testimony during 2000 and a small number of interviews conducted for this dissertation, it was argued that Medicare-eligible retirees' health care has an impact on recruiting. This section considers that testimony and evaluates TFL in light of the scholarship on compensation's effectiveness at recruiting and retaining service members. This dissertation found that TFL is only slightly effective in increasing the supply of manpower. The section covers retention first and then turns its attention to recruiting.

The objective of the military compensation system is to manage personnel in support of the military's force structure needs, which predominantly includes recruitment and retention. As DOD acknowledges, "Compensation, by the very nature of its basic purpose, must support defense manpower policies that, in turn, support the military, strategic, and operational plans of this nation."<sup>214</sup>

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<sup>214</sup> Department of Defense, "Military Compensation Background Papers," 2.

It is extremely difficult to attribute service members' retention behavior to particular benefits. Military compensation is a highly complex, interconnected system of a variety of cash and non-cash, as well as immediate and deferred, benefits. A large number of in-kind benefits are automatically provided to all service members without election, making it hard to evaluate the perceived value each service member assigns a benefit. Furthermore, there are a multitude of factors in addition to compensation involved when members decide to remain in or separate from the military. Nevertheless, one must evaluate the effectiveness of a program against its intended purpose. Data from a DOD-administered survey in 1999, which was available at the time Congress passed TFL and which GAO referenced during hearing testimony to the HASC Military Personnel Subcommittee, revealed that dissatisfaction with military health care was not one of the common causes for active duty military members considering separation. Only three percent of the active-duty force said that lack of health care availability for retirees was a top reason to separate. Also, 81 percent reported they were likely or very likely to stay in the military for 20 years.<sup>215</sup>

Because TFL provides military retirees access to health care upon turning sixty-five, it is a noncash, deferred benefit. As described in the literature review in chapter two, this kind of benefit has limited utility in retaining troops during the first half of their careers and a very small effect on attracting new recruits. Furthermore, survey data shows the relative importance service members place on different types of compensation. The

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<sup>215</sup> Backus, *Hearings on National Defense Authorization Act for Fiscal Year 2001 Before the Military Personnel Subcommittee, Committee on Armed Services, House of Representatives*, 1007.

results found that troops do not value the level of the TFL benefit commensurate with the amount of funding required to provide it.<sup>216</sup>

With regard to recruiting, during consideration of the FY 2001 NDAA, the SASC Military Personnel Subcommittee heard testimony from military recruiters. These enlisted service members who staffed recruiting stations across the country had first-hand knowledge of what attracts young men and women into service. When asked if lifetime health care affects recruiting, the witnesses on the panel agreed that money and education benefits are what motivate recruits the most. This is consistent with the literature described in chapter two.

On the other hand, one recruiter noted that if health care benefits were cut or promises were not kept to retirees, some recruits with military parents who are frustrated by the broken promise might be influenced by the parent.<sup>217</sup> In later testimony the vice chiefs of staff of the military services, who are four-star general and flag officers, informed the subcommittee that retirees' dissatisfaction with broken promises negatively affects their recommendations to young recruits.<sup>218</sup> Interview data confirms there was a belief that retirees could influence recruits and this was a rationale that supporters used to secure free health care for Medicare-eligible retirees.

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<sup>216</sup> Harrison, "Rebalancing Military Compensation: An Evidence Based Approach". Harrison's survey sample was not random, introducing self-selection bias. Representation of the ranks in the sample does not accurately correspond to the proportion in the full military population.

<sup>217</sup> *Department of Defense Authorization for Appropriations for Fiscal Year 2001 and the Future Years Defense Program, Part 6 Personnel, Hearings Before the Subcommittee on Personnel, Committee on Armed Services, Senate.*, Held February 24 and March 2, 9, 2000, 106th Cong., S. Hrg. 106-609, pt. 6, February 24, 13–14.

<sup>218</sup> *Ibid.*, 277–78.

While existing scholarship finds that noncash compensation and deferred benefits have limited positive effect on recruitment and retention, this is only one, albeit the primary, purpose of military compensation. Many advocates believe the intangible effect associated with increases in any type of compensation has helped preserve the all-volunteer force. Those who sought greater pay and benefits in the 2000s usually were motivated by perceived insufficiencies and a moral obligation to military members to repay them for their service, especially frequent, lengthy deployments to Iraq and Afghanistan. This is valid reasoning, although data measuring the ability of TFL, in particular, to affect people's willingness to volunteer and serve is not readily available.

In addition to the traditional, compensation-oriented reasons for providing health care to military retirees, DOD notes other secondary advantages. These include ensuring "...the availability of physically acceptable and experienced personnel in time of national emergency," and providing "...military physicians and dentists exposure to the total spectrum of demographically diverse morbidity, an experience that is necessary to support professional training programs and ensure professional satisfaction for a medical service career."<sup>219</sup>

Overall, TFL is not particularly useful in recruiting or retaining military personnel. As the literature summarized in chapter two states, money and education benefits are the most important factors to recruits, and deferred, noncash benefits have a limited effect on retaining service members. Recall that only 17 percent of the force advances to retirement, and retirement can occur as early as age thirty-eight, 27 years

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<sup>219</sup> Department of Defense, "Military Compensation Background Papers," 675.

before qualifying for TFL. This can cause TFL to seem like a distant benefit to the few people who earn it.

### **Budgetary Implications**

During debate on the final outcome of TFL, Sen. Phil Gramm (R-TX) said, “Not only is this bill a budget buster—it will win the blue ribbon . . . of fiscal irresponsibility and lack of financial discipline.”<sup>220</sup> The amount spent each year on health care for retirees sixty-five and older and their dependents grew to reach \$10.7 billion in FY 2012.<sup>221</sup> Several factors contribute to the increase in overall military health-care spending, including the rise in benefits available and the number of claimants to them, low cost-sharing for beneficiaries and consequent excessive utilization of services, and general medical inflation. However, TFL has been the largest single factor contributing to the recent cost growth in the military’s medical program. Excluding TFL, the DOD’s health-care costs have increased 90 percent between FY 2000 and FY 2012. However, when TFL’s accrual fund is included, spending grew roughly 150 percent over the same period.<sup>222</sup>

Health care, in general, has experienced considerable cost growth, which is projected to continue. In 1990, health care accounted for 4 percent of DOD’s total

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<sup>220</sup> *Congressional Record*, S10370 (daily ed., October 12, 2000), statement of Sen. Phil Gramm (R-TX).

<sup>221</sup> Department of Defense, “Overview: United States Department of Defense Fiscal Year 2016 Budget Request,” 6–2. Numbers shown are actuals.

<sup>222</sup> Leed and Gregerson, “Keeping Faith,” 17. Congress required in the FY 2001 NDAA the DOD to use accrual budgeting for the TFL program beginning in FY 2003. When the DOD began to account for future TFL liabilities in current budgets, it made deferred costs immediately evident and dramatically increased the DOD medical budget.



budget. After the introduction of TRICARE in 1994, that figure rose to 6 percent. From 2000 to 2012, the health care budget increased 130 percent (excluding the effects of inflation), causing health care to consume 10 percent of the overall defense budget by 2012.<sup>223</sup> This is noteworthy considering the total defense budget increased markedly in the 2000s. The DOD requested \$47 billion for its military healthcare system in FY 2015, which constituted 9 percent of the DOD's non-war-related budget request.<sup>224</sup> The Congressional Budget Office estimates the DOD healthcare budget will increase by roughly 40 percent to \$65 billion by FY 2030.<sup>225</sup> Figure 1 depicts the past and future cost growth of the military's health care, including a representation of the dramatic increase in costs associated with the establishment of the TRICARE-for-Life benefit. Note, however, that there are healthcare-related costs embedded in other areas of the defense budget, which makes it difficult to get a full accounting of the true cost of military health care. For example, military hospitals are funded generally from the armed services' Military Construction budget accounts and the service members that operate military treatment facilities and care for beneficiaries are funded out of the Military Personnel accounts.

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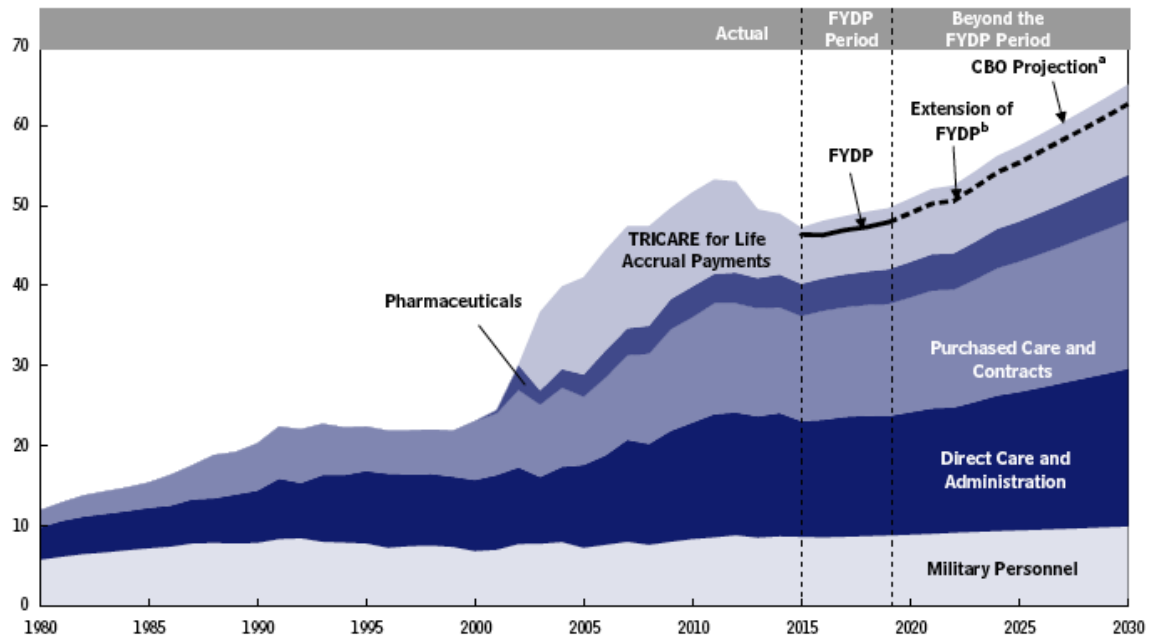
<sup>223</sup> Congressional Budget Office, "Approaches to Reducing Federal Spending on Military Health Care," 8.

<sup>224</sup> Congressional Budget Office, "Long-Term Implications of the 2015 Future Years Defense Program," 23.

<sup>225</sup> Ibid., 24. In FY 2015 dollars.

## Costs of DoD's Plans for Its Military Health System

Billions of 2015 Dollars



Source: Congressional Budget Office.

Notes: Supplemental and emergency funding for overseas contingency operations, such as those in Afghanistan and Iraq, is included for 2014 and earlier but not for later years.

Before 2001, pharmaceutical costs were not separately identifiable but were embedded in the costs of two categories: "Purchased Care and Contracts" and "Direct Care and Administration." In 2001 and later years, most pharmaceutical costs are separately identifiable, but some of those costs are embedded in the category "TRICARE for Life Accrual Payments."

The amounts shown for the Future Years Defense Program (FYDP) and the extension of the FYDP are the totals for all categories.

DoD = Department of Defense; FYDP period = 2015 through 2019, the period for which DoD's plans are fully specified.

- Each category shows the CBO projection of the base budget from 2015 to 2030. That projection incorporates costs that are consistent with DoD's historical experience.
- For the extension of the FYDP from 2020 to 2030, CBO projects the costs of DoD's plans using the department's estimates of costs to the extent they are available and costs that are consistent with CBO's projections of price and compensation trends in the overall economy when the department's estimates are not available.

Figure 1 Cost of DOD's Military Healthcare System<sup>226</sup>

Source: Congressional Budget Office

Another budgetary impact of TFL is that it qualifies as mandatory spending, which forces the internal allocation of DOD funds. When TFL was designed, lawmakers also established the Medicare-Eligible Retiree Health Care Fund (MERHCF) to pay for

<sup>226</sup> Congressional Budget Office, "Long-Term Implications of the 2015 Future Years Defense Program" (Washington, D.C., November 2014), 25.

the benefit with accrual funds. “In an accrual budget, costs...are recognized during the years in which the employees are working, not when the benefits are actually paid.”<sup>227</sup> In the case of TFL, DOD must pay into the MERHCF the amount estimated to be required for the cost of future medical benefits of current military personnel and their dependents. Accrual funding is direct spending and not subject to annual appropriations.<sup>228</sup> Direct spending is known as the budget authority, and resultant outlays, derived from authorizing legislation, not appropriations bills. Direct spending, often used interchangeably with mandatory spending, consists mostly of entitlements.<sup>229</sup> Because of the obligatory nature of entitlements, they must be satisfied before all other claims on the budget. In effect, mandatory spending results in opportunity costs that affect other programs, particularly if the size of the overall budget is limited.

As stated above, DOD health care costs are growing. Total military compensation costs are also on the rise.<sup>230</sup> Figure 2 illustrates the cost growth in military pay and benefits from 2000 to 2014. The cost for military compensation increased 54 percent. The resources required to fund military health care doubled. The other large cost driver was the basic allowance for housing, which increased 133 percent.<sup>231</sup>

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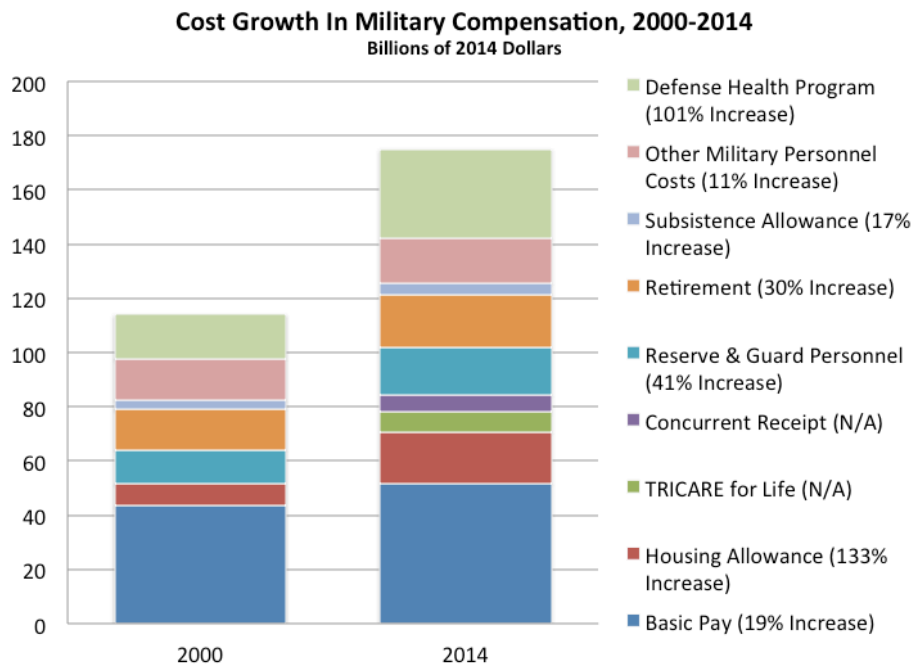
<sup>227</sup> Congressional Budget Office, “Accrual Budgeting for Military Retirees’ Health Care,” 1.

<sup>228</sup> Ibid., 3.

<sup>229</sup> Congressional Budget Office, “Direct Spending and Defense Programs,” 1.

<sup>230</sup> Department of Defense, “Overview: United States Department of Defense Fiscal Year 2016 Budget Request,” 6–2. DOD spent \$99.5 billion for military pay and benefits in FY 2001 and \$179 billion in FY2014. Yet, active-duty end strength declined slightly from 1,385,116 in FY 2001 to 1,314,016 in FY 2014. .

<sup>231</sup> Congressional Budget Office, “Growth in DoD’s Budget from 2000 to 2014,” 4.



**Figure 2 Cost Growth in Military Compensation, 2000-2014<sup>232</sup>**

Some military pay and benefits, namely TFL, Concurrent Receipt, and military retirement, are funded through mandatory spending, which means DOD must resource these accounts. Interview data shows that most other compensation programs, although funded with discretionary spending, are considered sacrosanct and the budgets for troops' pay and benefits are rarely jeopardized. Therefore, as "must-pay" military personnel compensation increases, defense officials are presented with a policy dilemma. One option is that DOD could pay for the military personnel programs at the expense of other defense programs. Alternatively, if the cost to compensate service members is rising, DOD could reduce the number of troops and consequently the compensation bill.

<sup>232</sup> Figure based on budget data in Congressional Budget Office, "Growth in DoD's Budget from 2000 to 2014" (Washington, D.C., November 2014), 4.

“Changing the number of military personnel directly affects the costs to compensate, train, equip, and support those personnel.”<sup>233</sup> According to interviews and available research, which will be highlighted below, it appears both trade-offs are happening already to some extent.

One former DOD comptroller’s opinion is that in a period of expanding budgets, as was experienced in the 2000s when additional funding was available to the DOD to assist the war effort, there are no negative budgetary implications of expanded military compensation. However, in times of contracting budgets and rising healthcare costs, as we are experiencing now in the 2010s, there are important strategic ramifications. The budgetary trade-offs in the short-term occur in the operations and maintenance accounts in programs like training, equipment maintenance, and facilities upkeep, as well as in the military construction accounts. In the long-term, the budgetary trade-offs will affect weapons procurement and research and development.<sup>234</sup> Naturally, it is difficult to demonstrate empirically that the requirements to fund one program forces a reduction in another program’s budget account. The choices to divert resources from priorities like weapons modernization and readiness to military personnel take place during internal budget deliberations and are not evident to the public. However, interview respondents attest that these strategic choices occur.

The effect of these trade-offs causes concern for military readiness and ultimately national security. Clifford Stanley, the under secretary of defense for personnel and

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<sup>233</sup> Congressional Budget Office, “Long-Term Implications of the 2015 Future Years Defense Program,” 18–19.

<sup>234</sup> Respondent 23, interview by author, Arlington, VA, September 3, 2014.

readiness in 2010 attested, “While there is little question that those [compensation] increases were necessary in the past, rising personnel costs could dramatically affect the readiness of the Department.”<sup>235</sup> In an open letter to Congress and the Secretary of Defense, 10 leading defense think tanks argued, “every unnecessary base that remains open, every excess civilian employee that remains on the payroll, and every mis-targeted dollar of military compensation signifies, in the final sense, a theft from both the training and equipping of our young men and women in uniform and, ultimately, the security of our citizens.”<sup>236</sup>

The other kind of budgetary trade-off that can occur when military personnel benefits are treated as virtually untouchable is a reduction in manning levels. As one former under secretary of defense noted, “If your topline ...is flat and your ...[increasing cost trajectory] of personnel doesn’t change, then you have to reduce the size of the force.”<sup>237</sup> Research has demonstrated there has been a rapid increase in the cost per service member due to expanding pay and benefits in the 2000s. The cost of compensation per active-duty troop grew 76 percent, adjusting for inflation, from FY 1998 to FY 2014.<sup>238</sup> As the cost to compensate troops increase, and the budget is

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<sup>235</sup> *Department of Defense Authorization for Appropriations for Fiscal Year 2011, Part 6 Personnel, Hearings Before the Subcommittee on Personnel, Committee on Armed Services, Senate.*, Held March 10, 24, April 28, and May 12, 2010, 111th Cong., S. Hrg. 111-701, pt. 6, March 10.

<sup>236</sup> Defense Reform Consensus, “An Open Letter to Congress and Secretary Hagel,” June 3, 2013, <http://csbaonline.org/2013/06/03/open-letter-to-congress-defense-reform-consensus/>.

<sup>237</sup> Respondent 6, interview by author, Washington, D.C., June 16, 2014.

<sup>238</sup> Defense Reform Consensus, “An Open Letter to Congress and Secretary Carter,” April 29, 2015, <http://www.cfr.org/defense-budget/open-letter-secretary-carter-defense-reform-consensus/p36551>. The Defense Reform Consensus is a consortium of think tanks

constrained, DOD can afford fewer troops. Since FY 2001, military compensation has constituted approximately 29 percent of the DOD's budget. In the same period, active-duty end strength declined slightly, causing some to argue policymakers reduced force structure to hold military compensation costs to a third of the budget.<sup>239</sup> This equally dangerous trade-off results in fewer fighting units and could reduce US military capabilities. Whether the DOD has been forced to make one or both of the budgetary trade-offs described above, it stands to reason that increased military compensation programs, including TRICARE-for-Life, have budgetary effects that cause important strategic ramifications for national security.

Given the costs of TRICARE-for-Life, the question of affordability is raised, When GAO testified to Congress at the beginning of the FY 2001 legislative cycle, the GAO witness told the HASC Military Personnel Subcommittee that free health care was not affordable or necessary: "Much of this discussion centers around trying to make a distinction between needs, wants, and what we can afford.... It would be nice if everybody could have access to military health care, if everybody could have FEHB, if everybody could have a separate pharmacy benefit, if everybody could be eligible for the VA health care system and access that and everything would be fine. But I don't think

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including the Council on Foreign Relations, Brookings Institution, and the Center for Strategic and International Studies. Various analysts report the increase in compensation costs differently depending on such factors as which programs (and budget accounts) are included, the years of analysis, and adjustments for inflation.

<sup>239</sup> Military Compensation and Retirement Modernization Commission, "Interim Report," 18; Bipartisan Policy Center, "Rapid Growth in U.S. Military Personnel Costs Driven by Pay and Benefit Increases."

that the gap or the need is that large necessarily, nor do I think it is something that we can afford.”<sup>240</sup>

Later in debate on the floor of the Senate the issue of affordability came up again, albeit in a limited sense.<sup>241</sup> Sen. Jack Reed (D-RI) speaking about pay and benefits in general stated:

“There is a very practical consideration, and that is the limits of our budget. This legislation does many good things, but it raises an important question. It raises the question of whether we are reaching the limits of resources that we can effectively devote to personnel concerns, not only in terms of overall economic strategies in the country but also in terms of the inherently limited defense dollars because dollars we commit to personnel force cannot be used for operations, cannot be used for modernization, cannot be used for a host of programs...”<sup>242</sup>

Sen. Gramm argued against the high costs of the final version of the program, “The House entered that conference with a program that cost \$945 million. The Senate went into the conference with a program that cost \$466 million. They came out of conference with a program that cost \$60 billion, and committed us to a 70-year debt of \$200 billion.”<sup>243</sup>

The views quoted above were not common during the House and Senate floor debates on TFL. Rather, in light of the positive fiscal situation at the time, the general feeling seemed to be that the country could afford it. Representative Rob Andrews (D-

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<sup>240</sup> Backus, *Hearings on National Defense Authorization Act for Fiscal Year 2001 Before the Military Personnel Subcommittee, Committee on Armed Services, House of Representatives*, 822.

<sup>241</sup> Note that the other time in which concerns regarding the cost of TFL came up was when Rep. John Spratt (D-SC) during House floor consideration of the conference report voiced a mild apprehension. *Congressional Record*, H9653 (daily ed. Oct 11, 2000).

<sup>242</sup> *Congressional Record*, S10360 (daily ed. Oct 12, 2000), statement of Sen. Jack Reed (D-RI).

<sup>243</sup> *Congressional Record*, S10370 (daily ed. Oct 12, 2000), statement of Sen. Phil Gramm (R-TX).



NJ) articulated this sentiment when he argued the nation could pay for permanent nationwide Medicare Subvention, a similar, alternative approach at the time, “At a time when the country is bringing in about \$1.05 in revenue for every \$1 we spend, I believe the money is here. I think this is a question of will, not fiscal ability.”<sup>244</sup>

In closing, the TFL program has cost as much as \$10 billion a year. More importantly, this is mandatory spending that results in opportunity costs elsewhere in the defense budget. This has strategic implications for defense policy overall. The next section explains that this benefit is an entitlement, which amplifies these policy implications.

### **“Military Entitlements”**

Current scholarship on entitlements does not explore fully defense policies. Similarly, the field of Congress and national security neglects entitlements. One could argue, as this dissertation does, that entitlements are an important part of direct congressional action with significant implications.

To address this gap, this dissertation suggests the concept of “military entitlement,” a term that applies to some congressionally mandated benefits such as TRICARE-for-Life. Its meaning is simple: a legal obligation that the government provide a benefit to eligible members of the armed forces, former members, or their families. However, its implications are nuanced. In many ways, military entitlements operate like traditional entitlements with their quasi-permanence and open-ended spending equal to

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<sup>244</sup> *Congressional Record*, H3388 (daily ed. May 18, 2000), statement of Rep. Rob Andrews (D-NJ).

the sum of benefits provided; in other ways, they are unique. These nuances will be discussed below in the section on implications of military entitlements. First, however, this section will explain which military pay and benefits programs, generally, meet the criteria of a military entitlement and then catalog why TRICARE-for-Life is the quintessential military entitlement.

According to the literature, entitlements are obligations established in law that require the government to disburse a benefit to any individual or unit of government that meets the eligibility requirements. As such, they are legally enforceable, open-ended, quasi-permanent benefits.<sup>245</sup> All military compensation programs that are required in statute and provide a legal claim to a future benefit could be considered military entitlements. The rights and eligibility requirements must be established in law. This would satisfy the literature's agreed-upon basic principle of entitlements.

Entitlements typically share other traits as well, but not necessarily. For example, entitlements usually are funded through mandatory spending instead of annual appropriations. However, the enabling legislation occasionally does not establish a funding mechanism. For example, food stamps are considered entitlements but do not receive automatic funding and rely upon annual appropriations bills instead.<sup>246</sup> Almost all military compensation programs are funded through discretionary appropriations. Many of these policies meet the definition of a traditional entitlement and, despite the fact that they are officially categorized discretionary, operate like entitlements. Interviewees noted

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<sup>245</sup> Wildavsky and Caiden, *The New Politics of the Budgetary Process*; Schick, *The Federal Budget*.

<sup>246</sup> Ibid.

that military pay and benefits, especially with recent combat operations, are treated as sacrosanct.

As is discussed throughout this dissertation, military pay and benefits are popular, politically sensitive programs that obligate defense leaders to fulfill these requirements before executing other programs in the budget. When the Budget Control Act of 2011 required sequestration, an automatic, across the board reduction, rather than targeted or prioritized cuts, in federal government outlays to occur over ten years starting in 2013,<sup>247</sup> the Office of Management and Budget notified Congress that the president would exempt all military personnel accounts from sequestration. By protecting military pay and benefits from budget cuts, it made the cuts more severe for the other discretionary programs. OMB wrote to Congress, “This is considered to be in the national interest to safeguard the resources necessary to compensate the men and women serving to defend our Nation and to maintain the force levels required for national security. It is recognized that this action would trigger a higher reduction in non-exempt accounts.”<sup>248</sup> The president made the same ruling again in 2014.<sup>249</sup>

As the above example shows, although most military pay and benefits are not technically scored as mandatory spending, they often effectively operate as such. It is

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<sup>247</sup> Budget Control Act of 2011, Pub. L. No. 112-25, 125 Stat. 240 (2011).

<sup>248</sup> Office of Management and Budget, “Letter to the Honorable Joseph R. Biden, President of the Senate,” August 9, 2013, [https://www.whitehouse.gov/sites/default/files/omb/legislative/letters/military-personnel-letter-biden\\_080913.pdf](https://www.whitehouse.gov/sites/default/files/omb/legislative/letters/military-personnel-letter-biden_080913.pdf).

<sup>249</sup> Office of Management and Budget, “Letter to the Honorable John A. Boehner, Speaker of the House of Representatives,” August 8, 2014, <https://www.whitehouse.gov/sites/default/files/omb/legislative/letters/exempt-military-personnel-accounts-boehner.pdf>.

worth noting that according to the interview responses, most practitioners consider the threshold for an entitlement to be its funding mechanism. Some respondents also acknowledged, however, that military compensation is treated like an entitlement, even if it is technically funded through discretionary appropriations. Their interpretation of an entitlement is based on their perspective as practitioners who rely on CBO's scoring of programs. Despite practitioners' interpretation, this dissertation relies on the qualifications defined in entitlement theory.

Throughout this dissertation, the term "military entitlement" is used in reference to any pay or benefit that shall be provided in the future for an indefinite time and whose rights, requirements, and eligible claimants are defined in statute. TFL is one of the most clear-cut examples of a military entitlement, since its features meet so many of the defining characteristics of an entitlement, which will be detailed below. Two other programs that this dissertation classifies as military entitlements are the military retirement program and Concurrent Receipt.<sup>250</sup> In addition to meeting the basic definition, they are financed via mandatory spending. Other military entitlements include health care for military retirees not yet eligible for Medicare and the death gratuity available to survivors of service members who die on active duty.<sup>251</sup> Because entitlements are obligations of *future* disbursements, deferred benefits meet the criteria, but immediate cash compensation does not. Therefore, basic pay, for example, is not a

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<sup>250</sup> Concurrent Receipt allows service members to collect military retired pay without any offset for veterans' disability payments for service-connected disabilities of 50% or more.

<sup>251</sup> The death gratuity is a \$100,000 immediate case allowance provided to eligible survivors, usually spouses and/or children, to assist with financial needs in the period after the service members' death before other survivor benefits begin.

military entitlement. However, it still has many of the characteristics of an entitlement. Immediate compensation is a “quasi-entitlement,” or a program that creates rights, conveys benefits, and becomes an entrenched claim on the budget.<sup>252</sup>

### **TRICARE-for-Life: A Military Entitlement**

When Congress passed TFL in the FY 2001 NDAA, it created an entitlement with profound implications. One of this dissertation’s supporting research questions asked in what ways does TRICARE-for-Life resemble an entitlement and how does that impact the long-term ramifications of this benefit? This section presents the reasons TFL can be considered an entitlement.

As stated above, entitlements are statutory obligations for the government to disburse a benefit to any individual or unit of government that meets the eligibility requirements. As such, they are legally required, open-ended, quasi-permanent benefits.<sup>253</sup> In the case of TRICARE-for-Life, the benefit and eligibility requirements are set forth in chapter 55 of title 10, United States Code. The government’s obligation is indefinite, as there is no sunset provision or other end date included in the statute.

Additionally, the FY 2001 NDAA authorized a permanent funding mechanism, which is found in chapter 56 of title 10, United States Code. This funding mechanism allows DOD to automatically obligate funds, which is direct spending and not subject to

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<sup>252</sup> Wildavsky and Caiden, *The New Politics of the Budgetary Process*, 148, 151.

<sup>253</sup> Wildavsky and Caiden, *The New Politics of the Budgetary Process*; Schick, *The Federal Budget*.

annual appropriations.<sup>254</sup> According to the CBO cost estimate for TRICARE-for-Life, which CBO classifies as an entitlement, “A newly created trust fund would automatically provide spending authority for those benefits without further Congressional action, and would establish accrual accounting for intragovernmental payments into the new trust fund.... Thus, this proposal would directly increase federal spending because it would immediately obligate the federal government to make payments in 2003 and each year thereafter.”<sup>255</sup> Appropriations committees rarely exercise authority over direct spending, which are mostly entitlements. Conversely, authorization committees are usually in control of direct spending,<sup>256</sup> as was the case when the HASC and SASC determined the outcome of TRICARE-for-Life.

For the reasons listed above, this dissertation argues that TFL meets the basic defining characteristics of an entitlement. Because of the inherent qualities of entitlements, scholars have found similar characteristics in the way entitlements operate. TFL also matches several of these other features of entitlements. For example, action on entitlements is unscheduled and occurs irregularly. While the issue of retiree health care had been debated prior to 2000, Congress drafted, refined, and adopted legislation to address the problem in a matter of months, and the core benefit has not been revisited

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<sup>254</sup> Congressional Budget Office, “Accrual Budgeting for Military Retirees’ Health Care,” 3.

<sup>255</sup> Congressional Budget Office, “A Comparison of the Budgetary Effects for Two Proposals to Extend Health Care Benefits to Retirees of the Uniformed Services Who Are Age 65 and Older,” 3.

<sup>256</sup> Schick, *The Federal Budget*, 60–62, 194–95; Wildavsky and Caiden, *The New Politics of the Budgetary Process*, 8.

since 2000. The legislation did not appear to be scheduled and subsequent action has been irregular to nonexistent.

TRICARE-for-Life also matches the traits associated with entitlement budgeting. As the literature tells us, a change in law that creates a new entitlement or expands benefits or recipients causes an avalanche of additional spending. If program law stays constant, entitlement spending is typically incremental. When the TFL accrual fund went into effect in 2003, it resulted in an avalanche of new spending. In the years following implementation, spending was fairly consistent year to year.<sup>257</sup>

The following sections expound on the political and budgetary features of this and other military entitlements.

### **Implications of a Military Entitlement**

This section explains the nuances of military entitlements. Specifically, military entitlements are possibly more politically sensitive than traditional entitlements because of “concurrent issue ownership” among the political parties. Second, the mandatory spending associated with military entitlements can force future trade-offs within the defense budget. Finally, when Congress mandates a military entitlement, it retains greater control over the entitlement program than typical discretionary programs.

#### *Political Sensitivity*

TFL has a more intense political effect than other entitlements. Benefits to which recipients are entitled in law are highly sensitive to politics and resistant to reductions or discontinuation. It is difficult to reverse or reduce obligations provided in law, because it

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<sup>257</sup> See Figure 1 above.

is unpopular to deprive a group of something to which the law states they are entitled.<sup>258</sup>

The strong support that older military retirees have in the DOD, on Capitol Hill, and in interest groups exemplify the program's susceptibility to politics. Senior officials of the executive branch have routinely faced insurmountable political challenges in attempting to persuade lawmakers to alter military benefits. Former defense secretary Robert Gates described this experience: "The proposals routinely die an *ignominious* death on Capitol Hill [emphasis added]."<sup>259</sup> Speaking about what he considered to be the most challenging of DOD's six priorities for FY 2015, former defense secretary Chuck Hagel urged Congress, "Without serious attempts to achieve significant savings in [personnel compensation], which consumes roughly half of the DOD budget and is increasing, we risk becoming an unbalanced force, one that is well-compensated, but poorly trained and equipped, with limited readiness and capability."<sup>260</sup>

Political sensitivity for a military entitlement, however, is even more complex than traditional entitlements. According to the literature on political parties' issue ownership, Americans typically perceive the Republican Party as more skillful in handling issues such as national defense and taxes, while they tend to regard Democrats

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<sup>258</sup> Wildavsky and Caiden, *The New Politics of the Budgetary Process*, 132.

<sup>259</sup> Robert M. Gates, "Eisenhower Library (Defense Spending)" (speech, Eisenhower Library, Abilene, KS, May 8, 2010), <http://www.defense.gov/speeches/speech.aspx?speechid=1467>.

<sup>260</sup> Secretary of Defense Chuck Hagel, as quoted in Christopher J. Castelli, "Hagel Lays Out Six Priorities For FY-15 Budget And QDR," *InsideDefense.com*, November 5, 2013. Secretary Hagel is speaking of both military and civilian personnel compensation costs totaling roughly half of the DOD's budget.



as more adept at working social welfare and social group relations issues.<sup>261</sup> However, this issue identification is blurred for military entitlements. National security and social welfare issues overlap in TFL. The program is believed to strengthen the all-volunteer military and honor veterans, as well as expand medical assistance to senior citizens. Consequently TFL appeals to both parties. As a result, there are concurrent claims to the policy, instead of the traditional issue ownership of each party. This “concurrent issue ownership” by the parties will ensure long-lasting support for TFL.

As evidence that it is extremely difficult to alter or reduce military entitlements, the TRICARE-for-Life benefit has resisted reduction since its inception. The executive was unable to convince Congress to require Medicare-eligible retirees to choose either TFL or VA coverage in the president’s FY 2002 budget proposal. Also, DOD has tried unsuccessfully for several years in the 2010s to initiate an enrollment fee, or annual premium, for TFL coverage.

TRICARE-for-Life also has strategic ramifications due to its mandatory spending, which the next section argues.

### *Mandatory Spending*

It is not enough to say that TFL is expensive. Rather, because it is an entitlement that legally obligates the government to provide a service, total costs are open-ended. The amount of resources required to sustain an entitlement depends on the number of people collecting the benefits and the amount of benefits to which they are entitled, not agencies’

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<sup>261</sup> Danny Hayes, “Candidate Qualities through a Partisan Lens: A Theory of Trait Ownership,” *American Journal of Political Science* 49, no. 4 (October 2005): 909.

management of the programs or annual appropriations bills. Furthermore, entitlements, as previous claims on government resources, must be satisfied before all other claims can be fulfilled. Hence, a rise in military entitlements, and their associated mandatory spending, is closely followed by budgetary compromises.

As combat operations conclude causing war-related costs to decline, and as discretionary programs are reduced to accommodate deficit-reduction techniques and typical postwar cost-cutting measures, the total defense budget will likely decrease.<sup>262</sup> However, the funding required for military entitlements will remain fixed, causing their portion of the declining defense budget to increase. Of course, only some of the military entitlements are financed through mandatory spending. Yet, the quasi-entitlements contained within discretionary accounts are so politically sensitive that their funding is considered virtually untouchable. Former defense secretary Panetta put it simply: “If we fail to address [the growth in personnel costs], then we won’t be able to afford the training and equipment our troops need in order to succeed on the battlefield. There’s a tradeoff here.”<sup>263</sup>

In 2000, few if any legislators were debating the preceding points. Rather, they were hoping to structure TFL as an entitlement with a secure line of funding in order to protect it from other priorities within the DOD budget. During a HASC hearing that informed conference deliberations on the final form of TFL, Representative Steve Buyer,

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<sup>262</sup> A recent example of a deficit-reduction technique that greatly impacted the defense budget is sequestration, as required by the Budget Control Act of 2011, Pub. L. No. 112-25, 125 Stat. 240 (2011). Sequestration is an automatic, across-the-board reduction in federal government outlays, rather than targeted or prioritized cuts, to occur over ten years starting in 2013.

<sup>263</sup> Panetta, “Defense Priorities: Today and Tomorrow.”

the HASC Military Personnel Subcommittee Chairman, questioned General Henry H. Shelton, the Chairman of the Joint Chiefs of Staff, about the preferred program design for TFL. Rep. Buyer asked, “Would it help you, when you formulate your defense budget in the Pentagon, if the retiree health care were funded with discretionary accounts or with mandatory accounts?” General Shelton responded, “I believe, Congressman, that we should be approaching the health care as an entitlement, vice something that would be discretionary.” They sought mandatory spending for TFL because they believed it would be safer for the program. “We need, in fact, to find an alternative means for financing health care so that it no longer competes with the requirement for new equipment, new technology and new bullets that we are concerned about, not only for today's readiness, but for tomorrow's,” General Shelton said.<sup>264</sup> He was referring to a fenced account within the defense budget that is funded on an accrual basis and scored as mandatory spending.

It is interesting that after fifteen years, a funding arrangement that was originally intended to protect retiree health care from other modernization and readiness needs has resulted in the opposite scenario. It has been argued that important modernization and readiness priorities are sacrificed due to cost growth in compensation programs. Because of the nature of entitlements, mandatory spending carries on indefinitely. In fact, the only factors capable of altering the trajectory of entitlement programs are demographics, the economy, and congressional changes to underlying program law.<sup>265</sup> The president's budget requests and even long-term national security planning have little control over

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<sup>264</sup> *Hearings on Military Services' Posture, Readiness, and Budget Issues Before the Committee on Armed Services, House of Representatives*, Held September 27, 2000, 106th Cong., H.A.S.C. No. 106-44, September 27, 92–96.

<sup>265</sup> White, “Entitlement Budgeting vs. Bureau Budgeting,” 512.

these programs. Rather, the benefits will continue to exist until Congress changes them. This gives the congressionally mandated policy a greater sense of permanence than if it were an internal DOD policy and hence secures the legislature's continued participation in policy decisions.

For policymakers to alter the trajectory of entitlement spending, they must change the source law. Therefore, greater technical expertise is required to reduce mandatory spending than to adjust up or down annual line items of discretionary spending. There are fewer individuals within government that can effectively change the underlying law to control entitlement spending. This presents one challenge in reforming entitlement spending.

Additionally, budget and program managers within the DOD and OMB have less control in entitlement budgeting than traditional budgeting. The money spent on entitlements is pre-determined in law and, therefore, fewer options are available to budget managers for gamesmanship during program execution. Instead, Congress has assumed the majority of the power. Of course, when legislators authorize mandatory spending, they give up their traditional "power of the purse" in the annual appropriations process. However, this could be a fair price to pay for avoiding DOD and OMB budget managers' tactics and having the authority to draft the program law that sets the entitlement's spending trajectory.

In closing, TRICARE-for-Life exhibits the characteristics of a military entitlement. The benefit, claimants, and costs are fixed according to the underlying program law, which Congress established. The executive cannot control how much is

spent on the program. The only government body capable of changing the program is Congress. Altering TFL is difficult, though, as it is an entrenched benefit with significant political sensitivity and concurrent issue ownership among the political parties. Given these facts, Congress' use of entitlements in national security policy corresponds with an additional degree of congressional influence in defense policymaking, as will be explored in the following chapter.

### **Summary**

When it created TRICARE-for-Life, Congress gambled on an untested, not particularly productive for generating manpower, expensive program that is largely irreversible because of its characteristics as an entitlement. The executive branch objected to the TFL program on account of its prematurity and cost, while GAO cautioned against expanding a demonstration program into a full-blown benefit before the results of the pilot were known.

Regarding the effect on military recruiting and retention, the information available to members at the time was mixed, but mostly there was no compelling evidence that TFL would aid in the supply of manpower. The hearing testimony of GAO and military recruiters explained that deferred benefits are usually less effective tools for enticing people into service or encouraging them to stay. This fact was later contradicted by the testimony of the vice chiefs of staff of the military services who said the second-degree effect on recruiting that retirees have as youth influencers is important.

Additionally, the CBO cost estimate projected the program would commit the government to roughly \$60 billion in mandatory spending and \$9.5 billion in

discretionary spending over ten years.<sup>266</sup> According to interview respondents, the Congress sitting in 2000 was simply not as concerned with a large mandatory expense as the current Congress is. One committee staffer recalled a popular belief among legislators regarding TFL: “Whatever it costs, it costs.”<sup>267</sup> In fact, House members encouraged their peers not to raise a point of order against the conference report because of the program’s mandatory spending. In the Senate, 84 senators voted to waive the Budget Act, accepting TRICARE-for-Life’s mandatory spending. Only nine senators opposed the motion.<sup>268</sup>

Finally, although the rigidity and quasi-permanence of an entitlement can lock policymakers into an expensive policy with spillover effects, this did not concern legislators. In fact, generally Congress intended for TFL to be locked so the unfulfilled promise of free health care could not be compromised again in the future. Sen. Warner stated during floor debate, “Permanently funding the military retiree health care benefit will be seen by retirees, active duty service members and potential recruits as the nation keeping its commitment of health care for life to military retirees. Those serving today and those who are joining the military will see that the promise of a lifetime of health care, in return for serving a full career, will be honored in perpetuity.”<sup>269</sup>

While some members of Congress understood the program design and likely appreciated the effects described above, most legislators were attracted to the generosity

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<sup>266</sup> Congressional Budget Office, “A Comparison of the Budgetary Effects for Two Proposals to Extend Health Care Benefits to Retirees of the Uniformed Services Who Are Age 65 and Older,” 3.

<sup>267</sup> Respondent 1, interview by author, Washington, D.C., April 2, 2014.

<sup>268</sup> *Congressional Record*, S10394 (daily ed. Oct 12, 2000), motion to waive the Budget Act with respect to the conference report agreed to, 84-9, Roll No. 274.

<sup>269</sup> *Congressional Record*, S10337 (daily ed. Oct 12, 2000), statement of Sen. John Warner (R-VA).

of the benefit for a deserving population. It is worth noting that within Congress there is a difference in levels of understanding on any given matter. There are members of Congress who act as subject matter experts on particular issues, usually committee and subcommittee chairs and ranking members. The rest of the body follows their lead.<sup>270</sup>

In closing, this chapter highlighted the objections and warnings that people raised during consideration of TRICARE-for-Life. Within Congress these warnings were infrequent. On the whole, advocates of the program experienced relatively little resistance in the considerably quick journey from initial proposal to enacted program. To illustrate, Sen. Gramm protested the hasty adoption of such an important, long-term benefit:

“...[TRICARE-for-Life] was never debated, never discussed, and was written by a handful of people that, quite frankly, are very intelligent people, very knowledgeable people about defense. As far as I am aware, it was never discussed in the Finance Committee, which has jurisdiction over Medicare. It was never debated in any public forum. It has never been tested anywhere. The point is, tonight on the verge of adjournment, we are getting ready to commit \$60 billion in spending on a program that may or may not work, may or may not satisfy people, and which is going to be virtually irreversible.”<sup>271</sup>

Overall, TRICARE-for-Life and other military entitlements have important strategic implications, particularly within defense budgeting. Therefore, this dissertation finds that when Congress created these structural policies, to some extent it affected strategic policies within national security. In conclusion, the policy implications of legislative decisions, although sometimes inadvertent and indirect, are one of the three reasons Congress wields more influence than the literature recognizes. The question of

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<sup>270</sup> Respondent 3.

<sup>271</sup> *Congressional Record*, S10371 (daily ed. Oct 12, 2000), statement of Sen. Phil Gramm (R-TX).

Congress' influence in defense policymaking will be answered directly in the following chapter.



## **VII. CONGRESS' ROLE IN MILITARY PERSONNEL POLICYMAKING**

TRICARE-for-Life proved to be a rich case study for answering the research question: How have Congress' disagreements with the executive on TRICARE-for-Life and subsequent legislative mandates affected broader defense policies and budgets, and what does the case indicate about Congress' role in defense policymaking? The analysis yielded several findings: Congress took direct action on the issue of health care for military retirees. The executive did not request officially, and indeed registered concern for, the legislative mandate. The TFL program has important manpower and budgetary implications. Although TFL is a valued benefit for a deserving population, the program is not particularly useful at generating manpower, and its costs contribute to the greater budgetary trade-off between military personnel accounts and other areas of defense spending. Finally, the enabling legislation for TFL can be categorized as an entitlement, which amplifies the programmatic implications because of its open-ended, compulsory, and entrenched nature. The first section of this chapter will explain how the evidence collected supports the hypothesis that Congress' decisions on TRICARE-for-Life represent a more commanding legislature than the literature typically acknowledges. The first section also expands the discussion to military personnel policymaking in general. It explains that Congress actively leads in this area of defense policy.

During the course of research on TFL, particularly while interviewing practitioners with first-hand experience of the legislative-executive branch interaction in defense policy, additional trends became evident. Notably, the relationship between the DOD and congressional defense committees can be adversarial, as it was during activity on TFL, but also collaborative at times. Also, there are forms of direct action that scholars of Congress and national security should be aware of to accurately gauge Congress' involvement in defense policymaking. Third, lawmakers have a tendency to be involved personally when the matter in question is a high profile issue or distributive policy. Finally, the legislative and executive branches have dissimilar perspectives and approaches to policymaking, causing them to produce different results. The later half of this chapter expands upon these findings.

### **Congress Commands Military Personnel Policymaking**

TRICARE-for-Life was created in Congress from a firmly held interest in honoring a widely perceived commitment to Medicare-eligible military retirees. The executive branch generally supported the policy's objective but at the time was in the midst of conducting demonstration programs to test the best policy option for delivering free health care to these older retirees. When Congress charged forward, the executive objected to the expense and prematurity of congressional proposals. Congress considered the program's cost justifiable and was interested in a quick resolution to these distinguished retirees' long-fought battle for the benefit. Ultimately, Congress passed TFL with little regard for the executive's concerns.

As expected, the program introduced significant funding requirements and contributed to the overall growth in military compensation costs. As stated above, Congress was responsible for much of the expansion of military compensation in the 2000s. Since it is extremely unpopular to reduce military pay and benefits, especially while troops are deployed in military operations, these programs have become virtually untouchable. Therefore, the growth in military personnel costs requires trade-offs within the defense budget, especially during times of limited resources. Because many of the personnel costs are a result of congressional action, it follows that Congress has had an effect, albeit indirectly, on broad aspects of national security policy.

Under the circumstances described above, Congress exercises its power in three noteworthy ways. First, it takes direct action to pursue its policy agenda, often over the objections of DOD and the executive. Second, it liberally uses its lawmaking authority to put in statute detailed policy preferences. This secures the future of the policy and allows Congress to act as the gatekeeper for potential changes. Third, the military personnel policies, and especially compensation, that Congress writes frequently have budgetary implications, some of which present opportunity costs for the DOD. Because congressional action in military personnel policy causes budgetary trade-offs that alter broader defense policy, the legislative branch's power is greater than the literature perceives. These three points will be discussed in detail below.

### **Congress Takes Direct Action Despite the Executive's Objections**

Scholars generally agree that the weaker post-WWII Congress has found more success with indirect means than direct methods. According to the literature, lawmakers

indirectly sway policy outcomes by signaling to the executive branch the legislature's position in the hopes that the executive will adjust its actions accordingly, influencing public opinion through activity such as speeches and hearings, and altering the process by which executive branch program managers and decision-makers make policy. Contrary to the academic consensus, however, Congress regularly takes direct action in military personnel policymaking to achieve its preferred substantive policies, often with strategic implications. Interview respondents noted that, for example, Congress uses direct action when it sets the overall size of the military, which is a critical element of combat power; authorizes the exact number of general and flag officers; and dictates the form and level of compensation for each rank.<sup>272</sup> Important to this dissertation's argument, Congress often takes direct action *despite* the objections of the executive branch.

In the case of TFL, Congress passed legislation that mandated wrap-around coverage to Medicare for older military retirees. When earlier versions of a similar benefit were included in draft legislation, the executive branch urged Congress to reconsider its approach. Congress did not. As one member of Congress who contributed to the enactment of TFL recalled, "At the time, I can remember I didn't care what DOD said or felt. ... I didn't care, because they were opposing things that I was doing."<sup>273</sup> In fact, the legislature remained unaffected by the executive's repeated objections and the benefit progressed from a limited commitment to a permanent entitlement by the end of the legislative cycle. A committee staffer who worked on the TFL provision noted DOD

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<sup>272</sup> Several interviewees also noted the Senate's power to confirm senior military leaders, which should be categorized as indirect action.

<sup>273</sup> Respondent 3.

leaders' adamant opposition to it and their refusal to work with Congress on the matter: "Even ... in the dark rooms where there's nobody watching, they wouldn't deal. And that was unusual, but it put us in a position of saying, okay, well we're going to write this ourselves. And you're just going to eat it."<sup>274</sup> Congress not only mandated the TFL benefit in 2000, but it also protected it in the following years. It assertively denied the DOD's attempts to make beneficiaries choose between TFL and VA coverage and to establish a TFL enrollment fee.

In Lindsay and Ripley's terms, the legislative branch used "direct" action to unequivocally drive the final outcome on the much-debated issue of free, lifetime health care for military retirees. While lawmakers could have utilized, and often did, "indirect" means to persuade the executive to accept their desired policy outcome, they did not limit themselves to indirect action, a less authoritative method. They disregarded the executive's apprehension and created a fundamental, substantive change to the military compensation system.

### **Congress Uses Legislation to Retain Control**

In the military personnel policy area, at least, Congress liberally uses its lawmaking authority to retain control. It does so in two ways. First, it creates voluminous military personnel statutes. When military personnel policy is placed in statute, changes to such policies must go through the legislature. Second, sometimes Congress writes these statutes in a particularly prescriptive manner. Rather than providing general guidance for the executive to interpret, Congress often chooses to legislate the minutia.

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<sup>274</sup> Respondent 1.

The effect of this is to place more detailed policy matters under the purview of the legislative branch. Public law governs federal regulations, department-level guidance, and other forms of executive branch policies. When Congress legislates matters that were previously dealt with at lower levels, it takes authority away from the executive branch and forces all supporting regulations and policies to align with the overarching statute. Regardless of the policy contained within the legislation or the inter-branch conflict that occurred during its development, interviewees agreed that DOD respects the rule of law, recognizes Congress' authority, and executes the law faithfully.

Historically the congressional defense committees have had a tendency to be prescriptive when legislating military personnel policy. A former staff director of a defense committee explained the legislative philosophy that the defense committees utilize for military personnel matters:

“Congress can basically promulgate broad strategic intent or policy intent but leave some level of discretion to the executive branch as to how to translate that into actual guidance and regulatory direction, et cetera. Or, [Congress] can write legislation that’s highly prescriptive and leaves very little degree of discretion. Personnel policy has been decidedly the most prescriptive [of the policy included in the defense bills] over the years.”<sup>275</sup>

The former staff director explained that detailed lawmaking usually occurs when a member of Congress or staffer has a strong conviction or when the committee is concerned DOD will not follow congressional direction. The interviewee explained that the committee, when “left to their own devices, will write the personnel [regulation] in

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<sup>275</sup> Respondent 17, interview by author, Arlington, VA, April 24, 2014.

law on the assumption that they know exactly what they want, and they're going ...to use the power of law to push it down the throat of the Department [of Defense].”<sup>276</sup>

Another staff director explained the defense committees' use of this tactic to retain control: “Since the executive branch, we believe, has been in kind of overreach, we have been taking statutory positions to limit their ability to make changes in which we're powerless to take a policy position on [*sic*].”<sup>277</sup> The respondent provided as an example DOD's persistent attempts to change health care policy. Since Congress put much of the policy's fundamentals into law, “...we can reject [DOD's] overtures by simply doing nothing.”<sup>278</sup> Congress' silent denials of executive policies are a nuance of congressional action that will be discussed below. This tactic is effective because “once Congress puts something into law..., then the executive branch is essentially powerless because it takes an act of Congress ...to change it.”<sup>279</sup>

For example, in a practice highly uncommon in civilian health care, Congress has established some copayments and deductibles in statute. This forces DOD to seek legislative relief whenever program managers need to adjust cost-sharing to keep up with evolving factors in the national health care market. An interviewee shared several instances when Congress employed this legislative tactic to take control of cost-sharing away from DOD. For instance, in FY 2013 when DOD attempted to increase the amount of copayments for pharmaceuticals, Congress set in law the exact dollar amount that DOD may charge for copayments and indexed any future copay increases to retirement

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<sup>276</sup> Ibid.

<sup>277</sup> Respondent 18.

<sup>278</sup> Ibid.

<sup>279</sup> Ibid.

pay increases.<sup>280</sup> The respondent described the dual effect of this action. First, it thwarted DOD's initiative in FY 2013, and second, DOD must seek congressional approval for any future attempts to alter the dollar amount of copayments further than the index specified in law.<sup>281</sup> Congress and the executive again clashed over pharmaceutical cost-sharing in the FY 2015 NDAA. It was one of the strongest points of contention that year, although the final outcome was a modest \$3 increase in pharmacy copays.<sup>282</sup> In effect, it took an act of Congress to adjust copayment amounts by a few dollars, a change that health care companies can make routinely to adjust for fluctuations in the health care market.

In addition to Congress being prolific and prescriptive when legislating military personnel matters, much of the compensation legislation is an entitlement or operates like one. Military entitlements essentially run on autopilot and the only government body that can alter their trajectory is Congress. Even quasi-entitlements are so politically sensitive that their status is secure even if they are not formal open-ended obligations.

TRICARE-for-Life is a "military entitlement" in that the government is legally obligated to provide this benefit to service members. The benefit is virtually permanent, since it will continue on indefinitely unless the legislative branch alters the enabling legislation. TRICARE-for-Life has an automatic funding mechanism in statute, which

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<sup>280</sup> Department of Defense, "Overview: United States Department of Defense Fiscal Year 2013 Budget Request," 5–4; National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, 126 Stat. 1802 (2013). For example, Congress specified that the Secretary of Defense may charge a \$5 copay for a 30-day supply of generic drugs obtained from retail pharmacies like Walgreens.

<sup>281</sup> Respondent 10, interview by author, Washington, D.C., February 27, 2014.

<sup>282</sup> Jory Heckman and Michael O'Connell, "Obama Signs NDAA Deal with Pay Raise, Higher Co-Pays for Troops," *FederalNewsRadio.com*, December 22, 2014, <http://federalnewsradio.com/budget/2014/12/obama-signs-ndaa-deal-with-pay-raise-higher-co-pays-for-troops/>.



allows for the financing of the program despite future appropriations or presidents' budget plans. Because Congress designed TFL as an entitlement, with its enduring place in statute and open-ended mandatory spending, it is nearly impossible for the executive branch to unilaterally alter the fundamentals of the TFL program. Due to the political sensitivity of the benefit, it is also extremely difficult for the president to successfully seek changes to the program from Congress, and for that matter, for Congress to accept such changes. By creating a military entitlement, the legislative branch took control of Medicare-eligible retirees' health care away from the executive.

### **Congress' Actions Affect Broader Defense Policies**

The control Congress exerted when it mandated the TFL entitlement over the objections of the executive is clearly evident. There is another, less obvious way in which Congress' actions increase its influence over broader defense policies and by extension its relative strength in defense policymaking. Although compensation issues are what scholars would call "structural" policies that distribute resources to obtain and organize military personnel, the effects of congressional decisions in this area have had great effect on the "strategic" policies of the military.<sup>283</sup>

As explained above, Congress initiated many of the more generous and expensive expansions of military personnel pay and benefits during the 2000s. Because these benefits are often treated as sacrosanct, their costs are virtually obligatory, which strains other programs within the discretionary parts of the defense budget. Interviewees spoke

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<sup>283</sup> Lindsay and Ripley's use of "strategic policy" refers to designing and equipping the military to meet future national security demands.

of internal trade-offs between personnel and other accounts like weapons modernization and readiness, particularly during times of limited resources.

Additionally, the costs for military compensation, of which TFL is a part, have grown while the size of the military force has decreased slightly. If the troops are more expensive to compensate today than they were before 2000, the military can afford less of them in the current period of constrained resources. Research suggests that the Defense Department has decreased manpower levels to accommodate compensation costs.<sup>284</sup> Although much can be accomplished through advanced technology and weaponry, it is hard to deny that a reduction in combat units reduces US military capabilities. Interview respondents also attested to trade-offs between military personnel and other accounts like modernization and readiness within the defense budget. Whether the opportunity costs of military compensation are taken in weapons and readiness or the size of the force itself, these costs present significant strategic challenges.

A different viewpoint is that pay and benefits have been critical to recruiting and retention, and reductions in compensation could cripple the All-Volunteer Force. This perspective, too, indicates that congressional action in compensation has an effect on strategic policy, because the preservation of the AVF is essential to manpower generation and the military's warfighting capabilities. With either viewpoint, the legislative branch has played a strong role in strategic defense policy even if the broader policy implications were inadvertent.

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<sup>284</sup> Military Compensation and Retirement Modernization Commission, "Interim Report," 18, 21–22; Bipartisan Policy Center, "Rapid Growth in U.S. Military Personnel Costs Driven by Pay and Benefit Increases."

## **Summary**

In military personnel policy, Congress does not defer to the president; rather, it exercises control. Congress disagreed with the executive on TRICARE-for-Life and exerted its influence over the executive branch several times over the fifteen years since TFL was created in 2000. The interviews showed that Congress also uses legislation to retain control in military personnel policy. It passes a large volume of highly detailed statute, including military entitlements. By doing so, Congress can dictate its desired policies to the executive. If changes are proposed to the law, Congress serves as the decision-maker and can direct adjustments to ensure the original intent is upheld. In short, Congress is proactive, prolific, and prescriptive. Finally, sometimes congressionally mandated military personnel laws, although structural in nature, have strategic implications for defense policy in general.

When Congress directs more generous pay and benefits than the president plans or requests, it takes direct action, sometimes even legislating an entitlement. In this respect, Congress knowingly exercises control. On the other hand, most legislators are not likely aware of how TFL and other mandated compensation affect broader defense policy. Part of Congress' influence in defense policymaking comes from these legislative mandates' indirect and inadvertent effects on strategic policy.

Some of the interview respondents described Congress as having a sense of ownership of military personnel policy. An overwhelming number of respondents said that DOD recognized congressional power in this policy area. A senior official in the Department of Defense stated, "We spend a lot of time worrying about and trying to

influence Congress and thinking about how Congress will react to this or that. Congress is always uppermost in our thoughts of how they will see something—how they will react to something. Can we persuade Congress to do this? Or can we do something without Congress interfering? But Congress is very much in our thoughts.”<sup>285</sup>

Some interviewees thought defense policy was disadvantaged by congressional involvement. Others believed Congress improved defense policy. Interestingly, many who were critical of congressional involvement served in the legislative branch. In either case, a prevalent theme throughout the interviews was the degree to which Congress proactively engaged the executive to achieve its policy objectives:

“Of all the various defense and national security policy issues, military personnel [policy] historically—dating back decades and decades and decades—is the one area where the Congress has traditionally asserted itself in a more detailed and aggressive fashion than in anything else. You can just pull out title 10 [of United States Code] and you can see just by sheer bulk, or any defense authorization bill.”<sup>286</sup>

The respondent was careful to note, “But that [being] said, it’s also episodic.”<sup>287</sup>

Some interviewees believed Congress to be a strong actor in national security policymaking, even outside of military personnel policy. Speaking of the legislative branch’s role in all of defense policy, a senior staff member at the Office of Management and Budget argued:

“The power lies with Congress. ... The administration only requests and recommends a budget, but the action, and the authorities, and the law all comes [*sic*] from the legislative side, and that’s why DOD invests so heavily in Hill contacts. ... Inevitably it is Congress that makes the final decisions. Now, the president could always veto, but again it’s a very high bar to veto something. ... We provide what’s called [Statements of Administration

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<sup>285</sup> Respondent 8, interview by author, Arlington, VA, March 10, 2014.

<sup>286</sup> Respondent 17.

<sup>287</sup> Ibid.

Policy]. ...But again, that is only for Congress' consideration. They really make their own decisions."<sup>288</sup>

### **Nuances of Congressional Involvement**

The analysis for this dissertation developed four findings in addition to the conclusions already reported above. These findings offer additional details about the subtleties of Congress' involvement in military personnel policymaking. These nuances help the dissertation contribute a more complete portrayal of congressional influence.

### **Inter-Branch Relations Are Both Adversarial and Collaborative**

The case study demonstrated a tumultuous relationship over the 15-year period of action on TFL. This case was characteristic of intense congressional assertiveness in which Congress actively pursued its own agenda over the objections of the executive. In the struggle for power in military personnel policy, there is often conflict, as was seen during action on TFL. However, this is just one set of interaction. Collaboration also occurs. In contributing to the literature on the separation of powers, this dissertation must be careful to present a complete portrayal.

According to the interview respondents, Congress is seen as both a meddler and a partner. In fact, some interview participants argued that when Congress acts, the executive is wise to accept it and collaborate with legislators. A former under secretary of defense said, "Rather than lamenting that reality, you're much better off trying to work with it and figure out a solution that is someplace in between the positions of the two contending parties."<sup>289</sup>

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<sup>288</sup> Respondent 14, interview by author, by telephone, March 20, 2015.

<sup>289</sup> Respondent 4, interview by author, Alexandria, VA, May 9, 2014.

This discussion pertains mostly to the working relationship between the congressional committees of jurisdiction and DOD. At levels above the Department of Defense and congressional committees, other variables like politics are more influential. For example, another former under secretary of defense, who was a politically appointed official, indicated that the DOD is less partisan than OMB or the White House. Furthermore, this less partisan nature somewhat insulates defense officials from political motivations and simplifies their interaction with Congress.<sup>290</sup> Outside of the defense committees, too, partisan preoccupations, the branches' positions on the greater national agenda, or local electoral issues can cause the inter-branch dynamic to become contentious.

Interviewees characterized the defense committee-DOD relationship as collaborative. In fact, most claimed the working relationship between DOD and the HASC and SASC is more respectful and productive than that of other departments and their authorization committees of jurisdiction. They attributed this to the DOD being an organization highly concentrated with military members who respect civilian leadership and Congress' constitutional authorities, the unique characteristics of the defense authorization committees, and the routine annual authorization process.

First, the US military is a highly professional organization with a strong commitment to civilian leadership of the military. The Framers wrote the Constitution so that the power of the military was not concentrated in one civilian's control. The Constitution afforded the president the commander in chief responsibility and Congress

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<sup>290</sup> Respondent 23.

possesses the authority to declare war, raise and maintain military forces, and ensure the common defense.<sup>291</sup> Interview respondents stated that the military as well as the congressional defense committees both take seriously Congress' Article 1, Section 8 responsibilities relating to congressional management of the military. Interviewees noted that military officers swear an oath to uphold the Constitution, and senior military leaders during their confirmation process in the Senate promise to provide their honest opinion to Congress even if it differs from the presidential administration's policies.

Next, interview respondents consider the members of Congress that comprise the congressional defense committees to be strong supporters of national security and the committee staff that serve them to be highly qualified. The membership of the defense committees is predisposed to have knowledge about and be favorable to defense matters. The House Armed Services Committee attracts members from both parties that are conservative, pro-defense, and seek to protect the flow of resources to military facilities and defense contractors in their districts. When asked why they sought membership on this committee, a majority of members said something related to constituency concerns.<sup>292</sup> Similarly, when senators were asked about motivations for joining SASC, they noted policy and constituency issues equally.<sup>293</sup>

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<sup>291</sup> Peterson, "The International System and Foreign Policy."

<sup>292</sup> Christopher J. Deering, "Armed Services Committee, House," ed. Donald C. Bacon, Roger H. Davidson, and Morton Keller, *The Encyclopedia of the United States Congress* (New York: Simon & Schuster, 1995), 92.

<sup>293</sup> Christopher J. Deering, "Armed Services Committee, Senate," ed. Donald C. Bacon, Roger H. Davidson, and Morton Keller, *The Encyclopedia of the United States Congress* (New York: Simon & Schuster, 1995), 95.

Staff of the defense committees tends to have more career experience and often come to the committees after retiring from the military. As one committee staff director explained, “the staff that tends to populate the committee historically has tended to be more professional. They’re there because of professional credentials as opposed to political credentials.... The identity of that staff tends to be more interested in the substantive merit of issues than political advantage.”<sup>294</sup> One former under secretary of defense said about the working relationship between the DOD and defense committee staff:

“We always found the professional staff to be terrific partners. ... They were concerned with what the Members directed, but they were always willing to listen to our arguments and to have a professional conversation. And we could get things done. ... We made a number of changes to compensation statutes throughout the first decade of this century to facilitate prosecuting the conflicts in Iraq and Afghanistan with an all-volunteer force. That would not have been possible without a constructive relationship between the executive and legislative branches—a real relationship of trust between those two branches. That doesn’t mean they did everything we asked; that doesn’t mean we loved everything they did. But there was agreement on the basic way forward.”<sup>295</sup>

Finally, routine action on the National Defense Authorization Acts affords Congress an avenue for the consistent oversight and prolific lawmaking described above. Authorization and appropriations bills for the Defense Department are supposed to be completed annually. While it is not special that the legislative branch fulfills its responsibility to provide appropriations annually, it has become rather uncommon for bills that authorize appropriations to pass each year. Authorization bills were originally meant to precede spending bills and direct the appropriations committees in funding allocations. Over time, the chambers failed to pass these annual reauthorization measures and the corresponding policy committees lost some degree of relevance.

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<sup>294</sup> Respondent 17.

<sup>295</sup> Respondent 4.



The practical implication of an annual defense authorization act is that the HASC and SASC are routinely involved in oversight and policy direction for national security. The FY 2015 NDAA is the 53<sup>rd</sup> consecutive annual defense authorization act. It contained approximately 700 pages of legislative text.<sup>296</sup> As part of this annual legislative process, DOD officials and military leaders are summoned to testify every year following the release of the president's budget request. Congressional staff analyzes the budget justification documents and legislative proposals, generating hundreds of requests for information and formal briefings. DOD intently observes the committees' markups and floor debate and responds to provisions that would disrupt its programs or policies.<sup>297</sup> In addition to the legislation generated each year, there are two committee reports and a conference report that accompany legislation. These several hundred-page reports present three opportunities to influence defense policy through indirect means and sometimes even direct means via directive report language. Interviewees also noted that the annual NDAAs provide the DOD an avenue for seeking legislative relief to emergent issues. This is a valuable option that most other departments do not have. Finally, with the annual authorization process, the defense committees and DOD have an opportunity for continuous interaction and to build a positive working relationship unlike other authorization committees:

“[For the committees] that basically have zero prospect of having a legislative vehicle to use, ... what do they resort to? They resort to other devices that tend to be confrontational and adversarial. They call hearings and drag up [*sic*] officials to yell at them or do the gamesmanship that, maybe, shapes their behavior. That happens on the Armed Services

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<sup>296</sup> Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, 128 Stat. 3292 (2014).

<sup>297</sup> Department of Defense, “An Overview of DOD’s Legislative Program.”

Committees too, but there's such a wealth of other channels of interaction and engagement ... because there's a deeper, more mature relationship."<sup>298</sup>

The interviewees noted how the relationship between DOD and the defense committees is different than that of other Federal agencies and their committees of jurisdiction due in most part to the unique attributes explained above. For example, a former deputy staff director of a defense committee explained how authorization committees' failure to legislate annually encourages executive departments to circumvent Congress:

"If I am the Department of Transportation or Health and Human Services, I don't look at my oversight committees as anything but a hindrance to accomplishing what I want to accomplish. They're not giving me anything I need, so [those departments] have fully embraced executive rulemaking as a means to develop policy, and they dare the Congress to stop them. And when you have authorization committees that can't stop them because they can't move legislation, [the departments will] win more times than not. [That is] simply not the case in the Department of Defense."<sup>299</sup>

In summary, any relationship in which both parties proactively assert themselves will have tension. However, the preceding qualities make it possible for the legislative-executive relationship in defense policymaking to also be cooperative.

### **Previously Overlooked Types of Direct Action**

When Congress created and later protected TFL, there were two features of the congressional method of "direct" action that stood out. First, as explained above, Congress designed TFL as an entitlement, which is fixed in statute and consequently secures the legislative branch's involvement in the program's future. "Military entitlements" are a critical aspect of congressional action for the reasons described throughout this dissertation. In the struggle for power in defense policymaking, military

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<sup>298</sup> Respondent 17.

<sup>299</sup> Respondent 24, interview by author, Washington, D.C., January 12, 2015.

entitlements are the strongest form of direct action that Congress can take to achieve its policy objectives.

The second noteworthy observation was that Congress often uses its power to deny the executive its requests, as it did when it later protected TFL. Accordingly, this dissertation argues there are two pillars of direct action: initiating policy, which is well accounted for in the literature, and prohibiting it. The latter occurs when Congress does not provide requested authorities or funds and when it proactively legislates a mandate that the executive branch cease a policy. Initiating new statute is more powerful than ignoring an executive's request. However, action taken to prohibit a policy, such as passing a moratorium on the use of funds for a certain purpose, could be as powerful as initiating policy. As a staff director of a defense committee stated, "I think health care is a really good example of where the executive branch has had almost no power over Congress, because we've consistently rejected every budget [proposal] that they've sent in."<sup>300</sup> To reject an executive proposal, like the proposals to introduce an annual premium for TFL, Congress does not have to include legislation prohibiting the annual fee. While this might appear like a simple and not very assertive action, it requires more strength than one might assume. To deny this proposal, and its estimated budgetary savings, the defense committees had to cut finding from some other area of the defense budget to produce an offset for lawmakers' policy of free TRICARE-for-Life.

This concept is an important modification to Lindsay and Ripley's framework. Initiating and prohibiting programs and policies are both types of direct action and

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<sup>300</sup> Respondent 18.

substantively affect policy. When acting on TFL, Congress both initiated and prohibited policy. Its use of these types of direct action shows a fully engaged legislative branch. It understands and makes the most of the tools of influence available to it.

Another congressional method previously overlooked in the literature is directive report language. The congressional defense committees use directive report language to instruct the executive branch to take an action. DRL appears in the committee or conference report that accompanies a bill. Although it is non-binding report language, it conveys a “direction to the agency in question that carries with it an obligation of compliance.”<sup>301</sup> Lindsay and Ripley’s concept of congressional methods of action classify non-binding report language as indirect action. However, the authors do not account for DRL explicitly. DRL is an unusual form of influence that could be considered a direct or indirect method depending on what requirements the language conveys. Usually, directive report language functions like procedural legislation, a form of indirect action. For example, DRL might require the DOD to brief the defense authorization committees, notify Congress before proceeding with a certain action, or study a policy alternative.

In the less common cases where DRL changes substantive policy, it is direct action. For example, in the House Appropriations Committee’s report to accompany the FY 2009 Supplemental Appropriations Bill, the committee directed DOD to supply troops serving in Afghanistan different uniforms that offered better concealment:

“In the course of visits to military installations throughout CONUS and overseas, the Committee has conducted an extensive review of the equipment needed by service

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<sup>301</sup> Respondent 17.

members engaged in combat operations. From discussions with senior enlisted personnel at Fort Benning, the Committee understands that soldiers deployed to Afghanistan have serious concerns about the concurrent [sic] combat uniform, which they indicate provides ineffective camouflage given the environment in Afghanistan. Accordingly, the Committee directs that within the funding made available in this title, the Department of Defense provide combat uniforms to personnel deployed to Afghanistan with a camouflage pattern that is suited to the environment of Afghanistan.”<sup>302</sup>

In response to the directive report language, the Army tested and later fielded a new camouflage pattern to Afghanistan.<sup>303</sup>

Although it does not have the authority of law and has not been approved by the full House or Senate, the authorization committees have a long-established practice of writing DRL and expecting the DOD to comply with the committee’s direction as stated. Traditionally, the Department observes DRL, as ignoring it would be shortsighted and likely incur further, more aggressive legislative action the following year. A former DOD senior official spoke of his advice to new, assertive DOD lawyers who wanted to ignore DRL: “The consequences are huge, and you will lose. The Congress will always have the upper hand, because all you’re doing is forcing them to take that 500-page bill that you hate and turn it into a 900-page bill that you’re really going to hate. Pick your poison.”<sup>304</sup> As one interviewee notes, however, the Defense Department sometimes ignores DRL. It

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<sup>302</sup> Committee on Appropriations, *Making Supplemental Appropriations for the Fiscal Year Ending September 30, 2009, and for Other Purposes*, H. Rept. 111-105 (May 12, 2009), 16.

<sup>303</sup> Jennifer Rizzo, “Army Sets Out to Buy Three New Camouflage Patterns,” CNN, (June 17, 2011), <http://www.cnn.com/2011/US/06/17/army.camouflage/index.html>; Alexandra Hemmerly-Brown, “Soldiers Deploying to Afghanistan to Get New MultiCam Uniforms, Boots, Gear,” Army News Service, (March 2, 2010), [http://www.army.mil/article/35184/Soldiers\\_deploying\\_to\\_Afghanistan\\_to\\_get\\_new\\_MultiCam\\_uniforms\\_boots\\_gear/](http://www.army.mil/article/35184/Soldiers_deploying_to_Afghanistan_to_get_new_MultiCam_uniforms_boots_gear/).

<sup>304</sup> Respondent 17.

is not, technically, enforceable, but it is more likely to be adhered to if the issue is an important one, the committee staffer is zealous, or it serves the DOD's interests.<sup>305</sup>

### **Legislators' Involvement Is Limited to Certain Issues**

Another important observation is that there is a difference between matters that garner the direct involvement of members of Congress and those that do not. Typically, in the military personnel arena, members of Congress are interested in high-profile social issues that capture national attention or distributive policies pertaining to compensation that affect their constituents. Examples of the high-profile, newsworthy social issues on which legislators typically engage are sexual assault among the troops, the Don't Ask Don't Tell policy, and women operating in combat roles. For example, after news broke about the substandard housing conditions for wounded service members at Walter Reed Army Medical Center,<sup>306</sup> congressional oversight of the issue was intense. However, one interviewee remarked on the current low level of congressional interest now that national attention to the issue has subsided, "If you were to find a lawmaker who had taken a look back at the living conditions in the last three years, I would say you have done a remarkable job of finding one because it's lost its currency at the moment."<sup>307</sup>

Regarding distributive policies, in the case of military compensation at least, such policies do not always correspond to parochial interests. As these are nationwide benefits

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<sup>305</sup> Respondent 24.

<sup>306</sup> Dana Priest and Anne Hull, "Soldiers Face Neglect, Frustration At Army's Top Medical Facility," *The Washington Post*, February 18, 2007, sec. Nation, <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/17/AR2007021701172.html>.

<sup>307</sup> Respondent 9, interview by author, Arlington, VA, April 11, 2014.

that affect all qualified individuals, national interest groups are more relevant than geographically oriented constituencies. One respondent explained that legislators usually engage in military compensation regardless of district or state: “You don’t need a base in your district, because veterans are everywhere.”<sup>308</sup>

There are numerous other policies and programs within military personnel policy that congressional staff work on behalf of the legislative branch. This work is often more than the routine and mundane; it is frequently important legislation and oversight. Even though it does not capture the elected officials’ attention, they still approve it when they vote on the annual defense authorization and appropriations bills. Regardless of whether legislators themselves are actively involved in defense policy or their staff is acting on their behalf, both scenarios are congressional action and qualify as the legislative branch asserting its agenda.

### **The Branches Differ in Perspective and Approach**

Congress has a different perspective and approach than the executive branch. DOD and Congress are generally unable to operate and see issues and policies in the same way. Congress is a large, decentralized, deliberative body that must build consensus to achieve action.<sup>309</sup> As such, Congress usually operates incrementally, with a near-term focus and a limited scope. As a senior congressional staff member argued, “Members are absolutely short-sighted in every way. There is no way that a member is thinking about

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<sup>308</sup> Respondent 1.

<sup>309</sup> David P. Auerswald and Colton C. Campbell, “Congress and National Security,” in *Congress and the Politics of National Security*, ed. David P. Auerswald and Colton C. Campbell (New York: Cambridge University Press, 2012), 12.

long-term costs in any of these things. They're solely focused on the two-year election cycle."<sup>310</sup> Furthermore, as discussed above, Members of Congress have far fewer resources and expertise at their disposal than the executive branch. Finally, when Congress extends benefits to service members, legislators believe they are helping these beneficiaries. Aiding service members is often the foremost, and sometimes only, policy concern, whereas the DOD is usually also concerned with other factors such as generating manpower.

On the other hand, agents of the executive branch serve one overarching vision, the president's policy initiatives. The Department of Defense, despite being a bureaucracy, is hierarchical and can operate in a more unified and swift fashion than the legislature.<sup>311</sup> Because DOD manages the programs and their budgets, the greatest programmatic expertise resides within the Department, and the DOD possesses the information necessary to make informed policy decisions.

To elaborate further on the congressional perspective, this section conveys insights from the interviews regarding the legislative branch's limitations on technical expertise in military compensation. Congress accomplished tremendous change in the composition of military pay and benefits in the 2000s. Yet, according to the interviews, legislators were not always aware that a gradual shift was occurring from immediate cash

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<sup>310</sup> Respondent 1.

<sup>311</sup> Of course, the DOD, and the executive branch in general, is not a monolith. Some actors within the DOD disagree with the official position and even act against the hierarchy to pursue other objectives. Additionally, the point made above relates to civilian administration officials and executive branch staff, not necessarily the military, which is in many ways separate and distinct from the departments and agencies of the executive branch.



compensation to deferred and in-kind benefits and often did not appreciate the impacts their legislation has on the larger manpower system. Respondents shared that most members of Congress have a basic knowledge of the issues but deferred to the legislators that operated as subject matter experts in this area. Interviewees explained that compensation theory and detailed manpower analysis usually do not influence legislators when they make decisions to increase pay and benefits. Such technical expertise is not common among lawmakers. The legislative branch is not organized or resourced to possess great information and expertise. Instead it is designed to represent citizens' perspectives on wide-ranging issues. One interviewee who spoke of limited staff resources explained that defense committee staffs working a particular portfolio such as military personnel policy are "two-deep if you count both parties, and [they] can't possibly out-staff the Pentagon."<sup>312</sup> From the committee staffs' perspective, "it can be frustrating—the limitations of your time and energy and your authority as a staff member to do what's really needed. ...[M]ost of the info you get has to come through DOD, which is trying its best not to tell you the full story."<sup>313</sup>

To summarize, Congress and the DOD are inherently different actors. They have dissimilar perspectives, are unable to operate in the same manner, approach policy problems differently, and do not appreciate policy implications in the same way. For example, when considering TFL, Congress viewed the benefit as necessary despite its costs. As stated in the Clinton Administration's formal objections, the executive preferred to refrain from such an expensive obligation. This difference in opinion continues to be

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<sup>312</sup> Respondent 1. The respondent is referring to the majority and minority staffs.

<sup>313</sup> Respondent 19, interview by author, Arlington, VA, June 19, 2014.

true today. DOD for years has warned of compensation costs being unsustainable, yet some in Congress remain skeptical of such warnings and argue that DOD does not clearly portray the true cost growth.<sup>314</sup> Consequently, Congress often rejects DOD's cost-saving proposals. Two widely dissimilar actors with complementary, if not equal, power to make military personnel policy will naturally arrive at different end states.

### **Summary**

This chapter brings together the dissertation's analysis to address the literature's argument that Congress has minimal influence in national security outside of structural policymaking and indirect actions. While much of the literature remains relevant and accurately conveys Congress as a secondary player in some circumstances, in military personnel matters Congress commands the pace and form of policymaking. Here, Congress is proactive, prolific, and prescriptive, which often yields military entitlements with important effects for strategic defense policies.

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<sup>314</sup> Respondent 10.

## **VIII. CONCLUSIONS AND CONTRIBUTIONS**

The evidence demonstrates that Congress proactively pursued its own policy agenda when it mandated and later protected TFL, a military entitlement. Obviously, the legislature is meant to pass laws, but the particulars of this case are important for three reasons. First, when Congress legislated, it disregarded the executive's official objections regarding the cost and prematurity of the program. It later upheld the policy of free lifetime health care despite the executive's attempts to introduce an annual premium for TFL. Such action does not match the deference, abdication, ambivalence, and other passive behaviors scholars commonly use to describe the legislative branch.

Second, TFL is a military entitlement, which intensifies its significant impacts. Also, because the policy is an entitlement, Congress will remain in control of its future. The numerous military entitlements that exist today are characteristic of Congress' prolific and prescriptive legislative style in military personnel policymaking. In fact, Congress intentionally uses the tactic of writing detailed policies into law in order to take control from the executive.

Third, TFL is an expensive deferred benefit without great ability to generate manpower and with mandatory spending that causes budgetary trade-offs within the defense budget. The effects of this program will continue to have an effect on the military's compensation system and defense budget for decades. The many strategic

implications of this legislation demonstrate the real but underappreciated effect of congressional influence in defense policymaking.

In the next section, this chapter will explain in greater detail the contributions to the Congress and national security field. It then closes with a discussion on military compensation reform, which defense leaders and think tanks have frequently called for and have been unable to persuade Congress to tackle. This section includes a summary of proposals for making TFL more affordable. These proposals have gotten a very poor reception in Congress, which is unsurprising given what this dissertation conveyed about Congress' position and actions over the last 15 years. Finally, this dissertation contributes to public policy a more accurate and nuanced interpretation of Congress' involvement in defense policymaking. With this information, practitioners will have a better understanding of how to work with Congress on policy changes within military compensation.

### **Contributions to the Academic Field**

Within the field of Congress and national security, many scholars agree that the legislative branch does not exercise its constitutional authority in national security policymaking. Instead, it often yields to the president, particularly in military operations or matters of strategic importance. The literature generally contends that legislators are active mostly in structural policy, like weapons procurement, because of their interests in parochial matters and role in the appropriations process (i.e. earmarks). Furthermore, Congress has had most success with indirect methods of participation, such as swaying public opinion, rather than the more authoritative direct method of substantive legislation.

However, this dissertation demonstrates the gaps in this body of literature and offers a more comprehensive view of Congress' involvement in defense policymaking.

First, existing research on the sharing of national security powers between the legislative and executive branches typically focuses on the use of force. Rarely does the literature examine more routine defense policy, and when it does, it appears to focus mostly on weapons acquisition and occasionally on military facilities. There is a dearth of scholarship on Congress' actions within military compensation policy. Military personnel issues are an area in which Congress passes significant substantive laws each year. Legislators do more than take strong direct action in this area; they exercise tight control over these policies. By adding this research to the body of scholarship on Congress and national security, this dissertation recognizes some of the strongest evidence of congressional action in national security policymaking and enables a more complete understanding of congressional influence.

Additionally, scholars have concluded that much of the control that Congress has reclaimed since the 1970s has been via indirect methods of action. However, the literature does not study the legislature's use of laws to require particular pay levels or benefits for military personnel. "Military entitlements," a concept this dissertation suggests be incorporated into the academic field, are strong uses of direct action with important long-term effects on broader defense policies. By designing a policy as a military entitlement, Congress takes the program out of the hands of the executive branch. As this research has shown, Congress also frequently denies or expressly prohibits the executive's budget and policy requests. Such direct participation, whether

military entitlements or action to prohibit the executive's plans, does not conform to the literature's suggestion that Congress relies mostly on indirect methods to merely sway national security policy.

Third, the literature notes the cross-influence of structural, strategic, and crisis policies but rarely studies the outcomes when decisions in one policy type impact another type. Given that Congress is considered more effective at making structural policies than strategic and crisis policies, a study of congressional influence should consider the second-order effects of legislative action on strategic policy. This dissertation finds that Congress influences to some degree strategic policy through military entitlements, albeit inadvertently and indirectly.

In closing, this dissertation examines some of the most influential forms of actual congressional power and provides a comprehensive, nuanced description of the legislative branch's participation in defense policymaking.

### **Contributions to Public Policy**

This dissertation opened with a description of a current policy dilemma in national security. With the piecemeal and untargeted expansion of military compensation in the 2000s, the military personnel accounts have experienced significant cost growth that some argue have forced a reduction in manpower levels and consequently a decrease in US military capabilities.<sup>315</sup> Prominent analysts have said that taking national security

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<sup>315</sup> Military Compensation and Retirement Modernization Commission, "Interim Report," 18; Bipartisan Policy Center, "Rapid Growth in U.S. Military Personnel Costs Driven by Pay and Benefit Increases."

off this path “will require a nearly unprecedented level of partnership and trust between the White House, Congress and DOD’s civilian and military leadership.”<sup>316</sup>

This dissertation contributes to public policy by preparing policymakers for the working relationship described above. Identifying the full extent of Congress’ involvement in this policy area, an often underappreciated factor, will be critical to ongoing attempts to reform military compensation. To aid policymakers and thought leaders outside the legislative branch in their collaboration with Congress, this dissertation presents critical information about Congress’ methods of making policy and style of interaction with the executive. In doing so, this dissertation illuminates the reasons why it is so difficult to restrict military compensation and curtail the growth in its expenditures.

There are currently very few proposals for reforming TRICARE-for-Life or Medicare-eligible military retiree health care. They are generally limited to adjustments in cost-sharing, a tweak to the program rather than a fundamental overhaul of the benefit. The Defense Department has repeatedly proposed an annual enrollment fee or premium for TFL, which has been echoed by some think tanks.<sup>317</sup> As stated earlier, Congress

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<sup>316</sup> David W. Barno et al., “The Seven Deadly Sins of Defense Spending” (Washington, D.C.: Center for a New American Security, June 2013), 41, <http://www.cnas.org/publications/seven-deadly-sins-defense-spending>.

<sup>317</sup> See for example Department of Defense, “Overview: United States Department of Defense Fiscal Year 2016 Budget Request”; Defense Health Board, “Final Report of the Task Force on the Future of Military Health Care” (Washington, D.C.: Department of Defense, December 2007); Barno et al., “The Seven Deadly Sins of Defense Spending”; John L. Kokulis, “Preserving the Military Health Care Benefit: Needed Steps for Reform” (Washington, D.C.: American Enterprise Institute, October 17, 2013), <http://www.aei.org/publication/preserving-the-military-health-care-benefit-needed-steps-for-reform/>.

unambiguously rejected the suggestion of a TFL enrollment premium. Receiving less attention in the military healthcare debate, the National Commission on Fiscal Responsibility and Reform and CBO have suggested the introduction of out-of-pocket fees in TFL. In this scenario, beneficiaries would be fully responsible for the first portion of their cost-sharing liability and part of the next portion spent.<sup>318</sup> Not to be overlooked, there are numerous alternatives proposed to the other areas of the military healthcare benefit, but such proposals often do not include reforms for TFL specifically.<sup>319</sup>

The lack of proposals to replace or adjust TRICARE-for-Life to achieve a more cost-effective benefit is not surprising. Reform is immensely challenging. First, as Rittel and Weber explained, social or policy problems are “wicked problems” that are difficult to solve for numerous reasons. For example, there is “no opportunity to learn by trial-and-error, every attempt counts significantly. ...every implemented solution is consequential. It leaves ‘traces’ that cannot be undone.”<sup>320</sup> One reason compensation reform is so challenging and the Defense Department is so averse to taking policy risks in this area is that the effects of a poor policy can be debilitating to force structure. It has

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<sup>318</sup> National Commission on Fiscal Responsibility and Reform, “The Moment of Truth: Report of the National Commission on Fiscal Responsibility and Reform” (Washington, D.C., December 2010), 38, [https://www.fiscalcommission.gov/sites/fiscalcommission.gov/files/documents/TheMomentofTruth12\\_1\\_2010.pdf](https://www.fiscalcommission.gov/sites/fiscalcommission.gov/files/documents/TheMomentofTruth12_1_2010.pdf); Congressional Budget Office, “Options for Reducing the Deficit: 2015 to 2024” (Washington, D.C., November 2014), 48, <https://www.cbo.gov/sites/default/files/cbofiles/attachments/49638-BudgetOptions.pdf>.

<sup>319</sup> See for example Military Compensation and Retirement Modernization Commission, “Final Report”; Department of Defense, “Report of the Tenth Quadrennial Review of Military Compensation; Volume II Deferred and Noncash Compensation,” July 2008, [http://militarypay.defense.gov/Portals/107/Documents/Reports/10th\\_QRMC\\_2008\\_Vol\\_I.pdf](http://militarypay.defense.gov/Portals/107/Documents/Reports/10th_QRMC_2008_Vol_I.pdf).

<sup>320</sup> Horst W. J. Rittel and Melvin M. Webber, “Dilemmas in a General Theory of Planning,” *Policy Sciences* 4, no. 2 (June 1, 1973): 163.



been estimated that without lateral entry, the military's closed labor market could take an entire generation to overcome a recruiting or retention debacle.<sup>321</sup>

Additionally, Rittel and Weber remind us that policymakers have “no right to be wrong.”<sup>322</sup> The consequences of a poor policy decision will matter immensely not only to the policy and its programmatic effects, but also to the individuals who are touched by the program. Medicare-eligible military retirees have come to depend on TRICARE-for-Life.

Similarly, the dependence on this benefit has created an entrenched status quo and interest groups that are committed to retaining it. As Kingdon explains, “Once a government program is established, the clientele it benefits organizes into an impressive collection of interest groups whose major purpose is to protect the program from which they draw their subsistence.”<sup>323</sup> This is especially true of military entitlements and quasi-entitlements that indefinitely obligate the government to provide a benefit. Again, these programs have become virtually sacrosanct, and to reduce military benefits, particularly while troops are deployed in military operations, would be extremely challenging politically. TRICARE-for-Life, specifically, is widely viewed as untouchable; this hard-won benefit for senior citizens is seen as rectifying a slight that lasted several decades too long.

Ideally, any efforts to make pay and benefits more effective in fulfilling manpower needs, more valuable to service members, and more affordable to the DOD

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<sup>321</sup> Leed and Gregerson, “Keeping Faith,” 43.

<sup>322</sup> Rittel and Webber, “Dilemmas in a General Theory of Planning,” 166.

<sup>323</sup> John W Kingdon, *Agendas, Alternatives, and Public Policies* (New York: Harper Collins, 1984), 159.

should be designed comprehensively and undertaken systematically. Since much of the expansion in compensation is a result of congressional action and because military entitlements cannot be altered without amending the underlying program law, Congress has and will continue to play an important part in this public policy area. Because of Congress's institutional characteristics, its approach to policymaking is necessarily consensus driven. It slowly takes action in small, discrete steps and builds agreement from the bottom up.<sup>324</sup> Furthermore, members of Congress, with the exception of certain subject-matter-expert lawmakers, have a limited understanding of the nuances of compensation policy. Finally, members of Congress have far fewer resources available to them and their staffs than program managers and officials within the executive branch, who interviewees note are not always forthcoming with information. Therefore, comprehensive reform based on a long-term perspective is difficult.

Nevertheless, Congress has equal constitutional power to the executive and has responsibility for raising and supporting military forces. In practice, Congress often leads in military personnel compensation issues and feels a sense of ownership over military personnel matters. If the executive is to limit escalating costs and invest more resources in the most constructive and efficient benefit types, it must effectively engage Congress to do so. Only legislators can affect the course of military entitlements.

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<sup>324</sup> Auerswald and Campbell, "Congress and National Security," 12.

## APPENDIX A: INTERVIEW DATES AND LOCATIONS

**Table 6 Interview Dates and Locations**

Participant	Date	Location
Respondent 1	4/2/14	Washington, D.C.
Respondent 2	2/27/14	Washington, D.C.
Respondent 3	4/29/14	Arlington, VA
Respondent 4	5/9/14	Alexandria, VA
Respondent 5	5/15/14	Arlington, VA
Respondent 6	6/16/14	Washington, D.C.
Respondent 7	1/8/15	Telephone
Respondent 8	3/10/14	Arlington, VA
Respondent 9	4/11/14	Arlington, VA
Respondent 10	2/27/14	Washington, D.C.
Respondent 11	7/17/14	Arlington, VA
Respondent 12	3/20/14	Washington, D.C.
Respondent 13	4/17/14	Telephone
Respondent 14	3/20/15	Telephone
Respondent 15	7/3/14	Washington, D.C.
Respondent 16	6/30/14	Washington, D.C.
Respondent 17	4/24/14	Arlington, VA
Respondent 18	3/13/14	Washington, D.C.
Respondent 19	6/19/14	Arlington, VA
Respondent 20	4/4/14	Alexandria, VA
Respondent 21	3/5/14	Washington, D.C.
Respondent 22	4/17/14	Telephone
Respondent 23	9/3/14	Arlington, VA
Respondent 24	1/12/15	Washington, D.C.

## **APPENDIX B: STATEMENT OF INDEPENDENT ANALYSIS**

From November 2013 to December 2015, I worked on the staff of the Military Compensation and Retirement Modernization Commission (MCRMC) as the Deputy Associate Director of Health Benefits. In this capacity, I collaborated with other staff and served Commissioners in analyzing the effectiveness and efficiency of the military's healthcare system and the health benefit provided to service members, retirees, and their families. I developed findings, recommended policy alternatives to Commissioners, and drafted portions of the Commission's Final Report and legislative proposals.

The scope of the MCRMC analysis and policy recommendations relating to health care was three-fold: (1) the health benefit provided to currently serving military members (both the active and reserve components), retirees not yet eligible for Medicare, and their dependents; (2) the operation and readiness of the military medical system, including its deployed activities, facilities, and personnel; and (3) the integration and redundancy of corresponding DOD and VA health care programs, including facilities and electronic health records.<sup>325</sup> In contrast, the focus of my dissertation was the creation of the TRICARE-for-Life policy and the role of Congress in developing and protecting it amidst

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<sup>325</sup> For the findings and recommendations relating to the health benefit for the military force, see Recommendation 6 of the MCRMC Final Report. For the findings and recommendations relating to medical readiness, see Recommendation 5. For the findings and recommendations relating to DOD-VA collaboration, see Recommendation 8. Military Compensation and Retirement Modernization Commission, "Final Report."

inter-branch policymaking dynamics. The Commission did not develop findings, recommendations, or legislative proposals on the TRICARE-for-Life policy or the healthcare needs or benefits provided to Medicare-eligible retirees; nor did it analyze the relationship and interaction between the legislative and executive branches. In short, there was no meaningful overlap in the subjects I analyzed for the Commission and my dissertation.

The work I performed for the Commission and the research I conducted for my dissertation were separate and distinct. While my understanding of the military healthcare system and benefits was improved through my work on the Commission, I did not rely on my MCRMC research or the research of other Commission staff for my dissertation analysis. In fact, I conducted much of the dissertation research prior to joining the Commission's staff. In the few places where I drew upon the Commission staff's analysis and findings for the dissertation, I cited the Commission's Final Report and Interim Report in accordance with the Chicago Manual of Style. Such references to MCRMC analysis are limited to total military compensation costs or the health benefit available to all DOD beneficiaries, not TFL recipients specifically.

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Alexis Lasselle Ross is the Deputy Associate Director of Health Benefits at the Military Compensation and Retirement Modernization Commission, an independent, temporary Federal commission authorized by Congress to provide recommendations on military compensation reform to the President and Congress. Prior to joining the Commission staff, Ms. Ross was the principal advisor to the Deputy Chief of Staff of the Army, G-4 (Logistics) on all congressional matters. From 2007 to 2009, Ms. Ross contributed to logistics priorities and strategies as the Deputy Director of the Logistics Initiatives Group, Army G-4. Prior to joining the Army Staff, Ms. Ross served the Armed Services Committee in the U.S. House of Representatives (HASC) in several capacities. As a Professional Staff Member on the HASC, she was responsible for all committee action on Army and Marine Corps readiness matters, including combat operations, training, logistics, and equipment maintenance. As an analyst for HASC, she conducted numerous oversight studies, including a 16-month study on pre-deployment preparations that involved routinely embedding with an Army battalion and Marine Corps battalion as they trained and operated throughout the US and Iraq. Previously, Ms. Ross directed the committee's legislative operations, which entailed orchestrating committee mark-ups, guiding House floor debate, and coordinating House-Senate conferences on the annual defense authorization bill.

Ms. Ross received her bachelor of arts in International Relations from Bucknell University. During her tenure at Bucknell, she spent a year studying at Oxford University in England. Ms. Ross graduated from the Naval War College with a master of arts in National Security and Strategic Studies.