

1 **SEC. \_\_\_\_. AMENDMENTS TO DEFENSE RESEARCH AND DEVELOPMENT RAPID**  
2 **INNOVATION PROGRAM**

3 Section 4061 of title 10, United States Code, is amended—

4 (1) by amending the section heading to read as follows:

5 **“4061. Rapid Integrated Scalable Enterprise Program”;**

6 (2) in subsection (a)(1)—

7 (A) by striking “small businesses” and inserting “small business concerns  
8 (as defined under section 3 of the Small Business Act (15 U.S.C. 632))” ; and

9 (B) by striking “technologies, including” and inserting “technologies,  
10 particularly innovative or”;

11 (3) in subsection (b)—

12 (A) in paragraph (3), by inserting before the period at the end the  
13 following: “, unless the Secretary approves a larger amount of funding for the  
14 project”; and

15 (B) in paragraph (4)—

16 (i) by striking “two years” and inserting “three years”; and

17 (ii) by striking “for an additional year” and inserting “up to an  
18 additional two years”;

19 (4) in subsection (d)(1), by inserting “or for procurement” after “evaluation”; and

20 (5) in subsection (e)(1), by inserting “or procurement” after “evaluation”.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how  
the legislative text would amend existing law.]**

**Section-by-Section Analysis**

This legislative proposal would amend section 4061 of title 10, United States Code (Defense Research and Development Rapid Innovation Program), to change the title of the program to “Rapid Integrated Scalable Enterprise Program” and to accelerate the commercialization and production of technologies that are stuck in between the “prototype” and “production” phase of development – commonly called the “valley of death.” Small businesses, specifically those developing critical technologies through prototype agreements, continue to fall into the valley of death between prototype and production. The Department of Defense (DoD) requires a program to support technology insertion and moving prototypes from small businesses to full scale integration into defense programs. This LP would help bridge that divide and enable innovative small businesses into the Defense Industrial Base.

DoD's small business strategy calls for establishing programs within the office of the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) that can work in conjunction with the Military Departments to support these activities. Additionally, a program such as this would also satisfy requirements of section 15(k) of the Small Business Act (15 U.S.C. 644(k)), which requires small business offices in agencies to support small businesses, specifically within the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs to obtain contracts with Federal agencies.

**Resource Information:** This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2025 President’s Budget.

**Changes to Existing Law:** This proposal would amend section 4061 of title 10, United States Code, as follows:

**§4061. Defense Research and Development Rapid Innovation Program Rapid Integrated Scalable Enterprise Program**

(a) PROGRAM ESTABLISHED.—(1) The Secretary of Defense shall establish a competitive, merit-based program to enable and assist small business concerns (as defined under section 3 of the Small Business Act (15 U.S.C. 632)) to accelerate the commercialization of various technologies, ~~including~~ particularly innovative or critical technologies developed pursuant to phase II Small Business Innovation Research Program projects, phase II Small Business Technology Transfer Program projects, technologies developed by the defense laboratories, capabilities developed through competitively awarded prototype agreements, and other innovative technologies (including dual use technologies).

(2) The purpose of this program is to stimulate innovative technologies and reduce acquisition or lifecycle costs, address technical risks, improve the timeliness and thoroughness of test and evaluation outcomes, support the integration of such products, and rapidly insert such products directly in support of primarily major defense acquisition programs, but also other defense acquisition programs that meet critical national security needs.

(b) GUIDELINES. —The Secretary shall issue guidelines for the operation of the program. At a minimum such guidance shall provide for the following:

(1) The issuance of one or more broad agency announcements or the use of any other competitive or merit-based processes by the Department of Defense for candidate proposals in support of primarily major defense acquisition programs, but also other defense acquisition programs as described in subsection (a).

(2) The review of candidate proposals by the Department of Defense and by each Office of Small Business Programs of each military department and the merit-based selection of the most promising cost-effective proposals for funding through contracts, cooperative agreements, and other transactions for the purposes of carrying out the program.

(3) The total amount of funding provided to any project under the program from funding provided under subsection (d) shall not exceed \$6,000,000, unless the Secretary approves a larger amount of funding for the project.

(4) No project shall receive more than a total of ~~two~~three years of funding under the program from funding provided under subsection (d), unless the Secretary, or the Secretary's designee, approves funding for up to an additional two years.

(5) Mechanisms to facilitate transition of follow-on or current projects carried out under the program into defense acquisition programs, through the use of the authorities of section 4004 of this title or such other authorities as may be appropriate to conduct further testing, low rate production, or full rate production of technologies developed under the program.

(6) Projects are selected using merit-based selection procedures and the selection of projects is not subject to undue influence by Congress or other Federal agencies.

(7) A preference under the program for funding small business concerns.

(c) TREATMENT PURSUANT TO CERTAIN CONGRESSIONAL RULES. — Nothing in this section shall be interpreted to require or enable any official of the Department of Defense to provide funding under this section to any earmark as defined pursuant to House Rule XXI, clause 9, or any congressionally directed spending item as defined pursuant to Senate Rule XLIV, paragraph 5.

(d) FUNDING. — (1) Subject to the availability of appropriations for such purpose and to the limitation under paragraph (2), the amounts authorized to be appropriated for research, development, test, and evaluation or for procurement for a fiscal year may be used for such fiscal year for the program established under subsection (a).

(2) During any fiscal year, the total amount of awards in an amount greater than \$6,000,000 made under the program established under subsection (a) may not exceed 25 percent of the amount made available to carry out such program during such fiscal year.

(e) TRANSFER AUTHORITY. — (1) The Secretary may transfer funds available for the program to the research, development, test, and evaluation or procurement accounts of a military department, defense agency, or the unified combatant command for special operations forces pursuant to a proposal, or any part of a proposal, that the Secretary determines would directly support the purposes of the program.

(2) The transfer authority provided in this subsection is in addition to any other transfer authority available to the Department of Defense.

1 **SEC. \_\_. AUTHORITY TO TRANSFER TRANSPORTATION SERVICES**  
2 **ACQUISITION AND CROSS-SERVICING AGREEMENT DEBTS TO**  
3 **EUROPEAN DEBIT-CREDIT PROGRAMS THROUGH MUTUAL**  
4 **AGREEMENT**

5 (a) IN GENERAL.—Section 2345(a) of title 10, United States Code, is amended—

6 (1) by striking “(a)” and inserting “(a)(1)”; and

7 (2) by adding at the end the following new paragraph:

8 “(2) For purposes of this subsection, if agreed to by the supplying entity and the receiving  
9 entity, direct payment may be effected by the transfer from the receiving entity to the supplying  
10 entity of credits of an equivalent value, accrued by the receiving entity under arrangements to  
11 which the United States is a party pursuant to section 2350m or section 2350o of this title.”.

12 (b) SURFACE EXCHANGE OF SERVICES PROGRAM.—Section 2350m of such title is  
13 amended—

14 (1) by redesignating subsections (e) and (f) as subsections (f) and (g),  
15 respectively; and

16 (2) by inserting after subsection (d) the following new subsection:

17 “(e) TRANSFERRED CREDITS.—Any credits transferred to the SEOS program under  
18 section 2345 of this title shall be credited to the receiving party for future use for the exchange or  
19 transfer of surface transportation in accordance with rates current at the time of the exchange or  
20 transfer.”.

21 (c) AIR TRANSPORT AND AIR-TO-AIR REFUELING AND OTHER EXCHANGES OF SERVICES  
22 PROGRAM.—Section 2350o of such title is amended by adding at the end the following new  
23 subsections:

1           “(d) CREDITING OF RECEIPTS.—Any amount received by the Department of Defense as  
2 part of the ATARES program shall be credited, at the option of the Secretary of Defense, to—  
3           “(1) the appropriation, fund, or account used in incurring the obligation for which  
4           such amount is received; or  
5           “(2) an appropriate appropriation, fund, or account currently available for the  
6           purposes for which the expenditures were made.  
7           “(e) TRANSFERRED CREDITS.—Any credits transferred to the ATARES program under  
8 section 2345 of this title shall be credited to the receiving party for future use for the exchange or  
9 transfer of air refueling and air transportation services in accordance with rates current at the  
10 time of the exchange or transfer.”.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how  
the legislative text would amend existing law.]**

### **Section-by-Section Analysis**

This proposal would amend 10 U.S. Code (U.S.C.) § 2345, to provide the Secretary of Defense (SECDEF) the discretionary authority to accept or use credits earned under arrangements to which the United States is a party pursuant to 10 U.S.C. §§ 2350m and 2350o, to liquidate debts incurred pursuant to a transaction under an acquisition and cross-servicing agreement (ACSA).

Current law requires that credits and liabilities of the United States accrued as a result of acquisitions and transfers of logistic support, supplies, and services under an ACSA be liquidated not less often than once every 12 months by direct payment to the entity supplying logistic support, supplies, and services, from the entity receiving such support, supplies, or services. Direct payment in this context refers to reimbursement only in cash.

Current law also authorizes the SECDEF, with the concurrence of the Secretary of State, to participate in the Surface Exchange of Services (SEOS) and Air Transport and Air-to Air Refueling and other Exchanges of Services (ATARES) programs of the Movement Coordination Centre-Europe (MCCE) pursuant to §§ 2350m and 2350o of title 10, U.S.C., respectively. Under these programs, participants “earn” and “spend” credits by exchanging transportation and air refueling services. Credits under the ATARES and SEOS programs have a readily ascertainable cash value and enable the owner of a credit to receive transportation and air refueling services of that value from other program participants.

The United States currently has ACSAs with every ATARES and SEOS participant country. On occasion, due to limitations in their domestic law, countries liable to the United States for debts accrued under an ASCA have difficulty liquidating ASCA debts as cash payments as required in 10 U.S.C. § 2345, but are able to offer ATARES or SEOS credits as a means of liquidating the cross-servicing debt. Conversely, it would be advantageous for the United States to use ATARES or SEOS credits as means of liquidating a liability owed under an ASCA transaction.

In 2016, Department of Defense (DoD) updated the DoD Financial Management Regulation removing the escalation process for aged partner nation debt, which exacerbates the goal in a timely reimbursement of ASCA debts. In 2020, the Government Accountability Office (GAO) issued an audit on foreign partner reimbursement of ASCA transactions and highlighted \$26 million of unreimbursed overdue transactions with a potential for over \$1 billion more recoverable by the DoD (*see* Defense Logistics Agreements, “DoD Should Improve Oversight and Seek Payment from Foreign Partners for Thousands of Orders It Identifies as Overdue”, GAO-20-309).

This proposal would address the GAO’s audit finding by authorizing the Secretary of Defense, at his or her discretion, to accept or use SEOS or ATARES credits as an acceptable means of direct payment under 10 U.S.C. § 2345(a). Although DoD is committed to updating guidance and implementing new oversight procedures to improve the ability to recoup funds from lagging partner nations, this legislative proposal to use ATARES credits to liquidate aged debt owed to the United States from partners within the ATARES program, would provide significant benefits for the United States, the U.S. Air Force, and the U.S. Transportation Command. For example, the proposed statutory changes would:

- (1) Reduce the stale, aged Air Mobility Command airlift Accounts Receivables from the AMC Transportation Working Capital Fund Financial Statement.
- (2) Reduce the risk of misstatement within the cash forecast and cash flow of the Air Mobility Command Transportation Working Capital Fund Financial Statement.
- (3) Reduce audit risk by lowering foreign debt through an auditable process.
- (4) Allow for the liquidation of partner nation debt without violating existing statutes precluding “free lift.”
- (5) Be an appealing compromise with partner nations who have not sourced funding to pay aged debt.
- (6) Not negatively impact the ASCA or Foreign Military Sales programs.
- (7) Support the National Defense Strategy of the center of gravity of mutually beneficial alliances, by using the debt liquidated to ATARES credits to provide U.S. flight hours on partner nation aircraft through ATARES or ground and rail services through SEOS.
- (8) Increase trust and collaboration with partner nations that are indebted to the US by finding a way to liquidate debt without having to find “cash”
- 9) Help increase and foster goodwill in lieu of the appearance of being a “debt collector.”

ATARES, as the more mature international framework, best describes how this proposal would work. The partner nation would approach DoD for assistance with an aged receivable for

which they could not find sufficient cash in a timely manner. As an alternative, if the DoD continued to have challenges in liquidating a debt through cash payment through established processes, the DoD would approach the partner nation with options to liquidate the aged receivable for which they could not find sufficient cash in a timely manner. Before liquidation of the ACSA debt, the United States and the partner nation would enter into an understanding for the exchange of ATARES credits in lieu of cash. The debt would be reduced from the aged accounts receivable, and the established amount owed by the ACSA transaction would then be converted into ATARES credits, which currently are defined in the “currency” of Equivalent Flying Hours (EFH) based on the airlift asset involved. The total value of the debt would be divided by the current EFH value, as agreed upon with the partner nation. The ATARES Program Manager, in coordination with the Financial Manager for the U.S. Air Force Air Mobility Command, would then forward the agreement to the United States representative for ATARES at the MCCE who would process the transaction in the ATARES New Accounting and Invoicing System. The new credits would be tracked and processed as the United States uses the ATARES system, which would increase the flexibility of the credit and debit system and provide the United States additional global airlift capacity. The United States could then use those credits with any partner nation in the ATARES consortium; when the DOD uses partner nation airlift, the DoD entity using the lift would be billed for the value of the ATARES credit and the value of the liquidated debt would be returned to the Transportation Working Capital Fund and DoD.

This proposal also adds language to the ATARES statute, 10 U.S.C. § 2350o, regarding “Crediting of Receipts” to mirror the newer SEOS statute, 10 U.S.C. § 2350m, resolving any potential issues with the differing language of the two statutes. This recommended change is a ministerial update to reconcile the two statutes, which were passed at different times and provides clarifying language to the older statute.

**Resource Information:** This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2025 President’s Budget.

**Changes to Existing Law:** This proposal amends sections 2345, 2350m, and 2350o of title 10, United States Code, as follows:

#### **§ 2345. Liquidation of accrued credits and liabilities**

(a)(1) Credits and liabilities of the United States accrued as a result of acquisitions and transfers of logistic support, supplies, and services under the authority of this subchapter shall be liquidated not less often than once every 12 months by direct payment to the entity supplying such support, supplies, or services by the entity receiving such support, supplies, or services.

(2) For purposes of this subsection, if agreed to by the supplying entity and the receiving entity, direct payment may be effected by the transfer from the receiving entity to the supplying entity of credits of an equivalent value, accrued by the receiving entity under arrangements to which the United States is a party pursuant to section 2350m or section 2350o of this title.

(b) Payment-in-kind or exchange entitlements accrued as a result of acquisitions and transfers of logistic support, supplies, and services under authority of this subchapter shall be

satisfied within 12 months after the date of delivery of the logistic support, supplies, or services.

(c)(1) Any credits of the United States accrued as a result of the provision of logistic support, supplies, and services under the authority of this subchapter that remain unliquidated more than 18 months after the date of delivery of the logistic support, supplies, or services may, at the option of the Secretary of Defense, with the concurrence of the Secretary of State, be liquidated by offsetting the credits against any amounts owed by the Department of Defense, pursuant to a transaction or transactions concluded under the authority of this subchapter, to the government or international organization to which the logistic support, supplies, or services were provided by the United States.

(2) The amount of any credits offset pursuant to paragraph (1) shall be credited as specified in section 2346 of this title as if it were a receipt of the United States.

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### **§2350m. Participation in European program on multilateral exchange of surface transportation services**

(a) PARTICIPATION AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Defense, with the concurrence of the Secretary of State, may authorize the participation of the Department of Defense in the Surface Exchange of Services program (in this section referred to as the "SEOS program") of the Movement Coordination Centre Europe.

(2) SCOPE OF PARTICIPATION.—Participation of the Department of Defense in the SEOS program under paragraph (1) may include—

- (A) the reciprocal exchange or transfer of surface transportation on a reimbursable basis or by replacement-in-kind; and
- (B) the exchange of surface transportation services of an equal value.

(b) WRITTEN ARRANGEMENT OR AGREEMENT.—

(1) IN GENERAL.—Participation of the Department of Defense in the SEOS program shall be in accordance with a written arrangement or agreement entered into by the Secretary of Defense, with the concurrence of the Secretary of State, and the Movement Coordination Centre Europe.

(2) NOTIFICATION.—The Secretary of Defense shall provide to the congressional defense committees notification of any arrangement or agreement entered into under paragraph (1).

(3) FUNDING ARRANGEMENTS.—If Department of Defense facilities, equipment, or funds are used to support the SEOS program, the written arrangement or agreement under paragraph (1) shall specify the details of any equitable cost-sharing or other funding arrangement.

(4) OTHER ELEMENTS.—Any written arrangement or agreement entered into under paragraph (1) shall require that any accrued credits or liability resulting from an unequal exchange or transfer of surface transportation services shall be liquidated through the SEOS program not less than once every five years.



(c) IMPLEMENTATION.—In carrying out any arrangement or agreement entered into under subsection (b), the Secretary of Defense may—

(1) pay the equitable share of the Department of Defense for the operating expenses of the Movement Coordination Centre Europe and the SEOS program from funds available to the Department of Defense for operation and maintenance; and

(2) assign members of the armed forces or Department of Defense civilian personnel, within billets authorized for the United States European Command, to duty at the Movement Coordination Centre Europe as necessary to fulfill Department of Defense obligations under that arrangement or agreement.

(d) CREDITING OF RECEIPTS.—Any amount received by the Department of Defense as part of the SEOS program shall be credited, at the option of the Secretary of Defense, to—

(1) the appropriation, fund, or account used in incurring the obligation for which such amount is received; or

(2) an appropriate appropriation, fund, or account currently available for the purposes for which the expenditures were made.

(e) TRANSFERRED CREDITS.—Any credits transferred to the SEOS program under section 2345 of this title shall be credited to the receiving party for future use for the exchange or transfer of surface transportation in accordance with rates current at the time of the exchange or transfer.

(fe) ANNUAL REPORT.—

(1) IN GENERAL.—Not later than 30 days after the end of each fiscal year in which the authority under this section is in effect, the Secretary of Defense shall submit to the congressional defense committees a report on Department of Defense participation in the SEOS program during such fiscal year.

(2) ELEMENTS.—Each report required by paragraph (1) shall include the following:

(A) A description of the equitable share of the costs and activities of the SEOS program paid by the Department of Defense.

(B) A description of any amount received by the Department of Defense as part of such program, including the country from which the amount was received.

(gf) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed to authorize the use of foreign sealift in violation of section 2631.

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### **§2350o. Participation in programs relating to coordination or exchange of air refueling and air transportation services**

(a) PARTICIPATION AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Defense, with the concurrence of the Secretary of State, may authorize the participation of the Department of Defense in programs relating to the coordination or exchange of air refueling and air transportation services, including in the arrangement known as the Air Transport and Air-to-Air Refueling and other Exchanges of Services program (in this section referred to as the "ATARES program").

(2) SCOPE OF PARTICIPATION.—Participation of the Department of Defense in programs referred to in paragraph (1) may include—

(A) the reciprocal exchange or transfer of air refueling and air transportation services on a reimbursable basis or by replacement-in-kind; and

(B) the exchange of air refueling and air transportation services of an equal value.

(3) LIMITATIONS WITH RESPECT TO PARTICIPATION IN ATARES PROGRAM.—

(A) IN GENERAL.—The Department of Defense balance of executed flight hours in participation in the ATARES program under paragraph (1), whether as credits or debits, may not exceed a total of 500 hours.

(B) AIR REFUELING.—The Department of Defense balance of executed flight hours for air refueling in participation in the ATARES program under paragraph (1) may not exceed 200 hours.

(b) WRITTEN ARRANGEMENT OR AGREEMENT.—Participation of the Department of Defense in a program referred to in subsection (a)(1) shall be in accordance with a written arrangement or agreement entered into by the Secretary of Defense, with the concurrence of the Secretary of State.

(c) IMPLEMENTATION.—In carrying out any arrangement or agreement entered into under subsection (b), the Secretary of Defense may—

(1) pay the equitable share of the Department of Defense for the recurring and nonrecurring costs of the applicable program referred to in subsection (a)(1) from funds available to the Department for operation and maintenance; and

(2) assign members of the armed forces or Department of Defense civilian personnel to fulfill Department obligations under that arrangement or agreement.

(d) CREDITING OF RECEIPTS.—Any amount received by the Department of Defense as part of the ATARES program shall be credited, at the option of the Secretary of Defense, to—

(1) the appropriation, fund, or account used in incurring the obligation for which such amount is received; or

(2) an appropriate appropriation, fund, or account currently available for the purposes for which the expenditures were made.

(e) TRANSFERRED CREDITS.—Any credits transferred to the ATARES program under section 2345 of this title shall be credited to the receiving party for future use for the exchange or transfer of air refueling and air transportation services in accordance with rates current at the time of the exchange or transfer.

1 **SEC. \_\_\_\_ . AUTHORIZATIONS FOR DEPARTMENT OF DEFENSE SCHOOL MEAL**  
2 **PROGRAMS.**

3 (a) DEPARTMENT OF DEFENSE DOMESTIC DEPENDENTS’ SCHOOLS.—Section 2164 of title  
4 10, United States Code, is amended by adding at the end the following new subsection:

5 “(m) MEAL PROGRAMS.—(1) The Secretary of Defense may administer a meal program  
6 for students enrolled in a school established under this section.

7 “(2) In this subsection, the term ‘meal program’ means a program established under the  
8 Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and the Richard B. Russell National School  
9 Lunch Act (42 U.S.C. 1751 et seq.) and administered by the Secretary of Defense for students  
10 enrolled in a school established under this section, consistent with Federal law and standards  
11 prescribed by the Secretary of Agriculture.”.

12 (b) DEPARTMENT OF DEFENSE OVERSEAS DEPENDENTS’ SCHOOLS.—Section 1415 of the  
13 Defense Dependents’ Education Act of 1978 (20 U.S.C. 921) is amended by adding at the end  
14 the following new subsection:

15 “(e)(1) The Secretary of Defense may administer a meal program for students enrolled in  
16 a school of the defense dependents’ education system.

17 “(2) In this subsection, the term ‘meal program’ means a program administered by the  
18 Secretary of Defense to provide breakfasts or lunches to students enrolled in a school of the  
19 defense dependents’ education system.”.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how  
the legislative text would amend existing law.]**

**Section-by-Section Analysis**

This proposal would provide statutory authorizations for the meal programs administered by the Secretary of Defense for students enrolled in Department of Defense (DoD) domestic and overseas dependents’ schools. Currently, DoD is explicitly authorized to administer a school

meal program only in overseas schools (see 10 U.S.C. 2243). As a result, the domestic program exists under a 40-year-old memorandum of understanding with the Department of Agriculture. This proposal would amend current law to authorize the DoD Education Activity (DoDEA) to administer meal programs for students enrolled in DoD domestic dependents' schools, as well as in overseas dependents' schools. Without explicit authorization, DoDEA cannot update DoD Directive 1015.5 "DoD Student Meal Program", which was written in 1983 and last updated in 1991.

**Resource Information:** This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2025 President's Budget.

**Changes to Existing Law:** This proposal would amend title 10, United States Code, and the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.) as follows:

### **Title 10, United States Code**

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#### **§ 2164. Department of Defense domestic dependent elementary and secondary schools**

(a) AUTHORITY OF SECRETARY.—(1) If the Secretary of Defense makes a determination that appropriate educational programs are not available through a local educational agency for dependents of members of the armed forces and dependents of civilian employees of the Federal Government residing on a military installation in the United States (including territories, commonwealths, and possessions of the United States), the Secretary may enter into arrangements to provide for the elementary or secondary education of the dependents of such members of the armed forces and, to the extent authorized in subsection (c), the dependents of such civilian employees.

(2) The Secretary may, at the discretion of the Secretary, permit dependents of members of the armed forces and, to the extent provided in subsection (c), dependents of civilian employees of the Federal Government residing in a territory, commonwealth, or possession of the United States but not on a military installation, to enroll in an educational program provided by the Secretary pursuant to this subsection. If a member of the armed forces is assigned to a remote location or is assigned to an unaccompanied tour of duty, a dependent of the member who resides, on or off a military installation, in a territory, commonwealth, or possession of the United States, as authorized by the member's orders, may be enrolled in an educational program provided by the Secretary under this subsection.

(3)(A) Under the circumstances described in subparagraph (B), the Secretary may, at the discretion of the Secretary, permit a dependent of a member of the armed forces to enroll in an educational program provided by the Secretary pursuant to this subsection without regard to the requirement in paragraph (1) with respect to residence on a military installation.

(B) Subparagraph (A) applies only if—

(i) the dependents reside in temporary housing (regardless of whether the temporary housing is on Federal property)-

(I) because of the unavailability of adequate permanent living quarters on the military installation to which the member is assigned; or

- (II) while the member is wounded, ill, or injured; and
- (ii) the Secretary determines that the circumstances of such living arrangements justify extending the enrollment authority to include the dependents.

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(m) MEAL PROGRAMS.—(1) The Secretary of Defense may administer a meal program for students enrolled in a school established under this section.

(2) In this subsection, the term “meal program” means a program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and administered by the Secretary of Defense for students enrolled in a school established under this section, consistent with Federal law and standards prescribed by the Secretary of Agriculture.

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## **Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.)**

### **ESTABLISHMENT OF DEFENSE DEPENDENTS EDUCATION SYSTEM**

Sec. 1402. [20 U.S.C. 921] (a) The Secretary of Defense shall establish and operate a program (hereinafter in this chapter referred to as the “defense dependents’ education system”) to provide a free public education through secondary school for dependents in overseas areas.

(b)(1) The Secretary shall ensure that individuals eligible to receive a free public education under subsection (a) receive an education of high quality.

(2) In establishing the defense dependents' education system under subsection (a), the Secretary shall provide programs designed to meet the special needs of—

- (A) the handicapped,
- (B) individuals in need of compensatory education,
- (C) individuals with an interest in vocational education,
- (D) gifted and talented individuals, and
- (E) individuals of limited English-speaking ability.

(3) The Secretary shall provide a developmental preschool program to individuals eligible to receive a free public education under subsection (a) who are of preschool age if a preschool program is not otherwise available for such individuals and if funds for such a program are available.

(c) The Secretary of Defense shall consult with the Secretary of Education on the educational programs and practices of the defense dependents' education system.

(d)(1) The Secretary of Defense may provide optional summer school programs in the defense dependents' education system.

(2) The Secretary shall provide any summer school program under this subsection on the same financial basis as programs offered during the regular school year, except that the Secretary

may charge reasonable fees for all or portions of such summer school programs to the extent that the Secretary determines appropriate.

(3) The amounts received by the Secretary in payment of the fees shall be available to the Department of Defense for defraying the costs of conducting summer school programs under this subsection.

(e)(1) The Secretary of Defense may administer a meal program for students enrolled in a school of the defense dependents' education system.

(2) In this subsection, the term "meal program" means a program administered by the Secretary of Defense to provide breakfasts or lunches to students enrolled in a school of the defense dependents' education system.

1 **SEC. \_\_. CLARIFICATION OF EXCEPTION FROM BERRY AMENDMENT**  
2 **REQUIREMENTS FOR PROCUREMENTS FOR VESSELS IN FOREIGN**  
3 **WATERS.**

4 Section 4862(d)(2) of title 10, United States Code, is amended by inserting “, or for,”  
5 after “Procurements by”.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]**

**Section-by-Section Analysis**

Section 4862 of title 10, United States Code (popularly known as the Berry Amendment), requires the Department of Defense (DoD) to acquire certain items only from American sources unless a specific exception applies. Section 4862(d)(2) of title 10 provides an exception to those domestic source restrictions for procurements by vessels in foreign waters. This legislative proposal would revise the statutory language to explicitly allow for the acquisition of non-domestic items not only “by” vessels in foreign waters, but also by DoD activities that are making purchases “for” vessels operating in foreign waters.

This statutory exception, as written, recognizes that vessels operating in foreign waters often do not have access to domestic, Berry Amendment compliant items when resupplying critical resources, such as food, in local overseas markets. Revising the language in this exception to also apply to procurements made on behalf of vessels in foreign waters recognizes the reality that supply and support procurements for United States vessels operating in foreign waters are, today, often solicited and awarded by DoD support agencies, and not the vessel directly. Adopting this legislative change would result in the intended relief from Berry Amendment source restrictions for vessels operating in foreign waters by also permitting DoD support agencies to quickly contract for needed items overseas. This proposal will allow vessels in foreign waters to take advantage of the contracting expertise and economies of scale offered by DoD support agencies, including DoD Executive Agents, and focus vessel resources on mission requirements rather than procurement.

This proposal would also harmonize the exception for vessels operating in foreign waters with the exception for the acquisition of perishable foods found at section 4862(d)(3) of title 10. That exception was amended by section 831 of the National Defense Authorization Act for Fiscal Year 2006 (P. L. 109–163; 119 Stat. 3388) to also add “or for” in order to apply to purchases made by activities on behalf of establishments located outside the United States.

As geopolitical circumstances require United States Navy and other vessels that are supported using DoD funds to expand operations into more austere locations in the Indo-Pacific region and worldwide, this proposal would ensure those vessels can be supported quickly and robustly by DoD support agencies. This proposal will permit additional avenues of overseas

support as United States vessel presence expands and will allow for the most expeditious means of supplying much needed items, including food items, by DoD support agencies in circumstances where domestic items cannot be supplied. This proposal will, therefore, promote an agile and responsive United States maritime presence that can effectively combat threats and promote national security interests globally. Not adopting this proposed change could result in DoD support agencies being unable to supply vessels abroad with mission critical items, including food.

This proposal is not expected to significantly impact the amount of American or non-American items sold to vessels in foreign waters. The Berry Amendment source restrictions apply only to a limited, but critical, scope of consumable items procured by the DoD, including food, clothing, tents, and certain fiber and fabric items. Under programs such as the DoD's Executive Agent program, the vast majority of these types of items are currently supplied to DoD vessels and other forces deployed overseas through contracts awarded by combat support agencies that specialize in procurement and distribution of these items. For example, outside the United States, food is often supplied under large, long-term food distribution contracts. Under those contracts, contractors forward position stocks of items sourced from the United States, which are stored in warehouse locations overseas, to support land- and sea-based military personnel. However, as United States Navy and other vessel movements become more dynamic, food support from these existing static platforms is not always available in the location and quantity required. Consequently, separate stand-alone contracts for foreign items must be put in place, the vessels must find another source for the required items, or the vessel must go without the needed material when operating in foreign waters. This revision will improve the ability of DoD support agencies that currently contract on behalf of vessels and other overseas activities to enhance support under existing contractual vehicles and provide agile and responsive support under those existing contracts by supplementing domestic stock for vessels in foreign waters. Consistent with the intent of the original Berry Amendment exception, this revision will ensure that those vessels are still able to receive needed items even if they are not able to be supplied from domestic sources. It is anticipated that requirements for vessels in foreign waters will continue to be satisfied with domestic supply, when available.

This proposal would not impact any other source restriction or statutory requirement imposed on procurements in support of vessels, including competitive procurement requirements or requirements related to ensuring the wholesomeness of food items acquired.

**Resource Information:** This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2025 President's Budget. Resources affected by this proposal are incidental in nature. Although this proposal may impact the DoD budget based on the difference in price between domestic and non-domestic items, as well as reductions in over-ocean transportation costs or overseas stocking requirements, it is anticipated that the overall DoD budgetary impact would be minimal.

**Changes to Existing Law:** This proposal would amend section 4862 of title 10, United States Code, as follows:

### **Title 10, United States Code:**



\* \* \* \* \*

## **§4862. Requirement to buy certain articles from American sources; exceptions**

(a) **REQUIREMENT.** - Except as provided in subsections (c) through (h), funds appropriated or otherwise available to the Department of Defense may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

(b) **COVERED ITEMS.** - An item referred to in subsection (a) is any of the following:

(1) An article or item of-

(A) food;

(B) clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof);

(C) tents (and the structural components thereof), tarpaulins, or covers;

(D) cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

(E) any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.

(2) Hand or measuring tools.

(3) Stainless steel flatware.

(4) Dinnerware.

(5) A flag of the United States.

(c) **AVAILABILITY EXCEPTION.** - Subsection (a) does not apply to the extent that the Secretary of Defense or the Secretary of the military department concerned determines that satisfactory quality and sufficient quantity of any such article or item described in subsection (b) grown, reprocessed, reused, or produced in the United States cannot be procured as and when needed at United States market prices.

(d) **EXCEPTION FOR CERTAIN PROCUREMENTS.** - Subsection (a) does not apply to the following:

(1) Procurements outside the United States in support of combat operations or procurements of any item listed in subsection (b)(1)(A) or (b)(2) in support of contingency operations.

(2) Procurements by, or for, vessels in foreign waters.

(3) Emergency procurements or procurements of perishable foods by, or for, an establishment located outside the United States for the personnel attached to such establishment.

(4) Procurements of any item listed in subsection (b)(1)(A) or (b)(2) for which the use of procedures other than competitive procedures has been approved on the basis of section 3204(a)(2) of this title, relating to unusual and compelling urgency of need.

(e) EXCEPTION FOR CHEMICAL WARFARE PROTECTIVE CLOTHING.-Subsection (a) does not preclude the procurement of chemical warfare protective clothing produced outside the United States if-

(1) such procurement is necessary-

(A) to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements; or

(B) in furtherance of agreements with foreign governments in which both such governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country; and

(2) any such agreement with a foreign government complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with section 2457 of this title.

(f) EXCEPTIONS FOR CERTAIN OTHER COMMODITIES AND ITEMS. - Subsection (a) does not preclude the procurement of the following:

(1) Foods manufactured or processed in the United States.

(2) Waste and byproducts of cotton and wool fiber for use in the production of propellants and explosives.

(g) EXCEPTION FOR COMMISSARIES, EXCHANGES, AND OTHER NONAPPROPRIATED FUND INSTRUMENTALITIES. - Subsection (a) does not apply to items purchased for resale purposes in commissaries, exchanges, or nonappropriated fund instrumentalities operated by the Department of Defense.

(h) EXCEPTION FOR SMALL PURCHASES. -

(1) Except with respect to purchases of flags of the United States, subsection (a) does not apply to purchases for amounts not greater than \$150,000. A proposed procurement of an item in an amount greater than \$150,000 may not be divided into several purchases or contracts for lesser amounts in order to qualify for this exception.

(2)(A)(i) Except as provided by subparagraph (B), subsection (a) does not apply to purchases of flags of the United States for amounts not greater than \$10,000.

(ii) A proposed procurement in an amount greater than \$10,000 may not be divided into several purchases or contracts for lesser amounts in order to qualify for the exception under clause (i).

(B) The Secretary of Defense may waive subsection (a) with respect to a purchase of flags of the United States in an amount greater than \$10,000 if the Secretary of Defense determines such waiver appropriate.

(C) This section is applicable to contracts and subcontracts for the procurement of flags of the United States.

(3) On October 1 of each year that is evenly divisible by five, the Secretary of Defense may adjust the dollar threshold in this subsection based on changes in the Consumer Price

Index. Any such adjustment shall take effect on the date on which the Secretary publishes notice of such adjustment in the Federal Register.

(i) **APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR PROCUREMENT OF COMMERCIAL PRODUCTS.** - This section is applicable to contracts and subcontracts for the procurement of commercial products notwithstanding section 1906 of title 41.

(j) **GEOGRAPHIC COVERAGE.** - In this section, the term "United States" includes the possessions of the United States.

(k) **NOTIFICATION REQUIRED WITHIN 7 DAYS AFTER CONTRACT AWARD IF CERTAIN EXCEPTIONS APPLIED.** - In the case of any contract for the procurement of an item described in subparagraph (B), (C), (D), or (E) of subsection (b)(1), if the Secretary of Defense or of the military department concerned applies an exception set forth in subsection (c) or (e) with respect to that contract, the Secretary shall, not later than 7 days after the award of the contract, post a notification that the exception has been applied on the Internet site maintained by the General Services Administration known as FedBizOpps.gov (or any successor site).

1 **SEC. \_\_\_\_ . CONSOLIDATION OF BRIEFING REQUIREMENTS RELATING TO THE**  
2 **RELATIONSHIP BETWEEN THE NATIONAL SECURITY AGENCY**  
3 **AND THE UNITED STATES CYBER COMMAND.**

4 (a) CONSOLIDATION.—Section 1642(c) of the National Defense Authorization Act for  
5 Fiscal Year 2017 (130 Stat. 2601; Public Law 114–328) is amended to read as follows:

6 “(c) ANNUAL BRIEFING.—Not later than March 1, 2024, and annually thereafter until  
7 March 1, 2028, the Secretary of Defense, the Director of National Intelligence, and the Chairman  
8 of the Joint Chiefs of Staff shall provide the appropriate committees of Congress a briefing on  
9 the relationship between the National Security Agency and United States Cyber Command.

10 Each briefing provided under this subsection shall include an annual assessment of the  
11 following:

12 “(1) The resources, authorities, activities, missions, facilities, and personnel used  
13 to conduct the relevant missions at the National Security Agency and the United States  
14 Cyber Command.

15 “(2) The processes used to manage risk, balance tradeoffs, and to conduct the  
16 missions of the National Security Agency and United States Cyber Command.

17 “(3) An assessment of the operating environment and the continuous need to  
18 balance tradeoffs to meet mission necessity and effectiveness.

19 “(4) An assessment of the operational effects resulting from the relationship  
20 between the National Security Agency and United States Cyber Command, including a  
21 list of specific activities conducted over the previous year that were enabled by or  
22 benefitted from the relationship.

1                   “(5) Such other topics as the Secretary of Defense, the Director of National  
2                   Intelligence, and the Chairman of the Joint Chiefs of Staff may consider appropriate.”.

3                   (b) CONFORMING REPEAL.—Section 1556 of the James M. Inhofe National Defense  
4                   Authorization Act for Fiscal Year 2023 (Public Law 117-263; 136 Stat. 2924) is repealed.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how  
the legislative text would amend existing law.]**

### **Section-by-Section Analysis**

This proposal would amend section 1642(c) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Public Law 114–328) and repeal a duplicative briefing requirement enacted in the James M. Inhofe NDAA for FY 2023. Section 1642(c) of the NDAA for FY 2017 requires biannual briefings until the Secretary issues a certification under subsection (a) of section 1642 related to the termination of the dual-hat arrangement between the National Security Agency (NSA) and United States Cyber Command (USCYBERCOM). In addition, section 1556 of the NDAA for FY 2023 requires the Secretary of Defense to provide an annual briefing to the congressional defense committees regarding the relationship between the NSA and USCYBERCOM. Since the certification and briefing requirements were enacted, substantial changes have taken place in the dual-hat arrangement, necessitating amendments to align the briefing requirements and maintain transparency with Congress while eliminating duplicative briefing obligations.

On May 24, 2023, the Secretary of Defense, the Chairman of the Joint Chiefs of Staff (CJCS), and the Director of National Intelligence (DNI) notified Congress of their joint agreement to maintain the dual-hat leadership arrangement between the NSA and USCYBERCOM based on the findings of an independent study which found the substantial benefits of the dual-hat leadership arrangement outweighed any associated adverse impacts. The Secretary, the CJCS, and the DNI agreed that maintaining the dual-hat arrangement was in the best interest of national security and as such, directed the establishment of a joint Department of Defense and intelligence community working group to develop recommendations for ensuring a durable and sustainable dual-hat arrangement. This agreement has established the Administration’s position that the dual-hat arrangement will not be terminated, while the current requirements of section 1642(c) impose a biannual briefing requirement that is based on the presumption that the dual-hat arrangement will be terminated. Additional briefing requirements contained in the NDAA for FY 2023 require substantially similar obligations to a subset of congressional committees, but on a different cadence.

This proposal will affirm the necessity of keeping Congress fully informed of the Department’s views on the relationship between NSA and USCYBERCOM, while ensuring the statute accounts for the revised plan to retain the dual-hat arrangement on an enduring basis.

**Resource Information:** There are no implications in the FY 2025 President's Budget.

**Changes to Existing Law:** This proposal would amend section 1642 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2601) and repeal section 1556 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117-263; 136 Stat. 2924) as follows:

**National Defense Authorization Act for Fiscal Year 2017**

**SEC. 1642. LIMITATION ON TERMINATION OF DUAL-HAT ARRANGEMENT FOR COMMANDER OF THE UNITED STATES CYBER COMMAND.**

(a) **LIMITATION ON TERMINATION OF DUAL-HAT ARRANGEMENT.**—The Secretary of Defense may not terminate the dual-hat arrangement until the date on which the Secretary and the Chairman of the Joint Chiefs of Staff jointly certify to the appropriate committees of Congress that—

- (1) the Secretary and the Chairman carried out the assessment under subsection (b);
- (2) each of the conditions described in paragraph (2)(C) of such subsection has been met; and
- (3) termination of the dual-hat arrangement will not pose risks to the military effectiveness of the United States Cyber Command that are unacceptable to the national security interests of the United States.

(b) **ASSESSMENT.**—

(1) **IN GENERAL.**—The Secretary and the Chairman shall jointly assess the military and intelligence necessity and benefit of the dual-hat arrangement.

(2) **ELEMENTS.**—The assessment under paragraph (1) shall include the following elements:

(A) An evaluation of the operational dependence of the United States Cyber Command on the National Security Agency.

(B) An evaluation of the ability of the United States Cyber Command and the National Security Agency to carry out their respective roles and responsibilities independently.

(C) A determination of whether the following conditions have been met:

(i) Robust operational infrastructure has been deployed that is sufficient to meet the unique cyber mission needs of the United States Cyber Command and the National Security Agency, respectively.

(ii) Robust command and control systems and processes have been established for planning, deconflicting, and executing military cyber operations and national intelligence operations.

(iii) The tools, weapons, and accesses used in and available for military cyber operations are sufficient for achieving required effects and United States Cyber Command is capable of acquiring or developing such tools, weapons, and accesses.

(iv) Capabilities have been established to enable intelligence collection and operational preparation of the environment for cyber operations.

(v) Capabilities have been established to train cyber operations personnel, test cyber capabilities, and rehearse cyber missions.

(vi) The Cyber Mission Force has achieved full operational capability and has demonstrated the capacity to execute the cyber missions of the Department, including the following:

(I) Execution of national-level missions through cyberspace, including deterrence and disruption of adversary cyber activity.

(II) Defense of the Department of Defense Information Network.

(III) Support for other combatant commands, including targeting of adversary military assets.

~~(e) BIENNIAL BRIEFING.—~~

~~(1) IN GENERAL.— Not later than 90 days after the date of the enactment of this subsection and biennially thereafter, the Secretary of Defense and the Director of National Intelligence shall provide to the appropriate committees of Congress briefings on the nature of the National Security Agency and United States Cyber Command's current and future partnership. Briefings under this subsection shall not terminate until the certification specified in subsection (a) is issued.~~

~~(2) ELEMENTS.— Each briefing under this subsection shall include status updates on the current and future National Security Agency–United States Cyber Command partnership efforts, including relating to the following:~~

~~(A) Common infrastructure and capability acquisition.~~

~~(B) Operational priorities and partnership.~~

~~(C) Research and development partnership.~~

~~(D) Executed documents, written memoranda of agreements or understandings, and policies issued governing such current and future partnership.~~

~~(E) Projected long-term efforts.~~

(c) ANNUAL BRIEFING.—Not later than March 1, 2024, and annually thereafter until March 1, 2028, the Secretary of Defense, the Director of National Intelligence, and the Chairman of the Joint Chiefs of Staff shall provide the appropriate committees of Congress a briefing on the relationship between the National Security Agency and United States Cyber Command. Each briefing provided under this subsection shall include an annual assessment of the following:

(1) The resources, authorities, activities, missions, facilities, and personnel used to conduct the relevant missions at the National Security Agency and the United States Cyber Command.

(2) The processes used to manage risk, balance tradeoffs, and to conduct the missions of the National Security Agency and United States Cyber Command.

(3) An assessment of the operating environment and the continuous need to balance tradeoffs to meet mission necessity and effectiveness.

(4) An assessment of the operational effects resulting from the relationship between the National Security Agency and United States Cyber Command, including a list of specific activities conducted over the previous year that were enabled by or benefitted from the relationship.

(5) Such other topics as the Secretary of Defense, the Director of National Intelligence, and the Chairman of the Joint Chiefs of Staff may consider appropriate.

(d) DEFINITIONS.—In this section:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of Congress” means—

(A) the Committee on Armed Services, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) DUAL-HAT ARRANGEMENT.—The term “dual-hat arrangement” means the arrangement under which the Commander of the United States Cyber Command also serves as the Director of the National Security Agency.

### **James M. Inhofe National Defense Authorization Act for Fiscal Year 2023**

#### ~~SEC. 1556. ANNUAL BRIEFING ON RELATIONSHIP BETWEEN NATIONAL SECURITY AGENCY AND UNITED STATES CYBER COMMAND.~~

~~(a) ANNUAL BRIEFINGS REQUIRED.— Not later than March 1, 2023, and not less frequently than once each year thereafter until March 1, 2028, the Secretary of Defense shall provide the congressional defense committees a briefing on the relationship between the National Security Agency and United States Cyber Command.~~

~~(b) ELEMENTS.— Each briefing provided under subsection (a) shall include an annual assessment of the following:~~

~~(1) The resources, authorities, activities, missions, facilities, and personnel used to conduct the relevant missions at the National Security Agency as well as the cyber offense and defense missions of United States Cyber Command.~~

~~(2) The processes used to manage risk, balance tradeoffs, and work with partners to execute operations.~~

~~(3) An assessment of the operating environment and the continuous need to balance tradeoffs to meet mission necessity and effectiveness.~~

~~(4) An assessment of the operational effects resulting from the relationship between the National Security Agency and United States Cyber Command, including a list of specific operations conducted over the previous year that were enabled by or benefitted from the relationship.~~

~~(5) Such other topics as the Director of the National Security Agency and the Commander of United States Cyber Command may consider appropriate.~~



1 **SEC. \_\_\_\_ . DETAILING OF APPELLATE DEFENSE COUNSEL.**

2 Subsection (b) of section 865 of title 10, United States Code (article 65 of the Uniform  
3 Code of Military Justice), is amended—

4 (1) in paragraph (1)—

5 (A) by striking “the Judge Advocate General shall forward the record” and  
6 inserting the following: “the Judge Advocate General shall forward—

7 “(A) the record”;

8 (B) in subparagraph (A), as designated by subparagraph (A) of this  
9 paragraph, by striking the period and inserting “; and”; and

10 (C) by adding at the end the following new subparagraph:

11 “(B) a copy of the record of trial to an appellate defense counsel who shall  
12 be detailed to review the case and, upon request of the accused, to represent the  
13 accused before the Court of Criminal Appeals;” and

14 (2) in paragraph (2)—

15 (A) in subparagraph (A)—

16 (i) in the matter preceding clause (i), by striking “shall” and  
17 inserting “shall, upon written request of the accused”;

18 (ii) in clause (i), by striking “, upon request of the accused,”; and

19 (iii) in clause (ii), by striking “upon written request of the  
20 accused,”; and

21 (B) in subparagraph (B)—

22 (i) by striking “accused” and all that follows through “waives” and  
23 inserting “accused waives”;

- 1 (ii) by striking “; or” and inserting a period; and  
2 (iii) by striking clause (ii).

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]**

### **Section-by-Section Analysis**

Section 544 of the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 broadened the access of those convicted by general and special courts-martial to review of their cases by a Court of Criminal Appeals. Before that provision’s enactment, only those who received sentences crossing designated thresholds at their general or special courts-martial received automatic appeals or appeals-as-of-right. Those whose cases fell below those sentence thresholds could only seek discretionary review after exhausting other designated procedures. Section 544 provides that the accused in every general or special court-martial case resulting in a conviction whose case is not automatically appealed to a Court of Criminal Appeals may file an appeal-as-of-right.

That broadening of access to the Courts of Criminal Appeals created a concomitant increase in the responsibility of the Judge Advocates General to detail appellate defense counsel to review the records in those cases. Under current law, an appellate defense counsel must review the record in every special or general court-martial case resulting in a conviction, even if the accused does not desire such a review. This legislative proposal would target scarce judicial resources by assigning an appellate counsel to review a special or general court-martial case only when a case is docketed before a Court of Criminal Appeals or an accused asks for review by an appellate defense counsel to inform a decision as to whether to file an appeal-as-of-right. That reform would promote efficiency in the military appellate review system.

The proposed amendment to Article 65(b)(1) (10 U.S.C. 865(b)(1)) would explicitly provide for the detail of an appellate defense counsel to review a case subject to automatic appeal and be available to represent the accused before the Court of Criminal Appeals if the accused desires such representation. The cases to which this provision would apply are those that include a sentence of death; dismissal of a commissioned officer, cadet, or midshipman; dishonorable discharge or bad-conduct discharge; or confinement for 2 years or more. Unless an accused affirmatively waives the right to appellate review, those cases are automatically reviewed by a Court of Criminal Appeals. The automatic detail of appellate defense counsel to review the record in those cases will facilitate the accused’s informed exercise of appellate rights.

The proposed amendment to Article 65(b)(2)(A) would alter the current system of automatic detail of appellate defense counsel to review every special and general court-martial case resulting in a conviction that does not qualify for automatic review by detailing such counsel only upon a written request for representation by appellate defense counsel. Under current law, a Judge Advocate General must detail an appellate defense counsel to review every record of a special or general court-martial resulting in a conviction regardless of whether the accused wishes to be represented or to appeal the case.

Because the enactment of section 544 of the NDAA for FY 2023 significantly increased the number of cases qualifying for direct appellate review, the Judge Advocates General may be compelled to shift scarce personnel resources from more meaningful work to review records of trial, some portion of which will never be docketed with a Court of Criminal Appeals. If this legislative proposal were to be adopted, the expansion in workload would be reduced and, most importantly, limited resources would be focused on those accused who desire counsel's assistance.

The proposed amendment to Article 65(b)(2)(B) would prevent the default assignment of appellate defense counsel when the accused affirmatively waives the right to appeal. Under current law, upon receipt of an appellate record of trial, an appellate defense counsel must complete a full review of that record. That effort is wasted if the accused already affirmatively waived the right to appeal. Importantly, even with such a waiver, a case is still subject to limited review under Article 65(d)(3). The amendment to Article 65(b)(2)(B) would ensure that appellate defense counsel are detailed to those cases in which an accused is interested in exercising appellate rights.

**Resource Information:** This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2025 President's Budget.

**Changes to Existing Law:** This proposal would amend section 865 of title 10, United States Code (article 65 of the Uniform Code of Military Justice) as follows:

#### **§ 865. Art. 65. Transmittal and review of records**

(a) TRANSMITTAL OF RECORDS.—

(1) FINDING OF GUILTY IN GENERAL OR SPECIAL COURT-MARTIAL.—If the judgment of a general or special court-martial entered under section 860c of this title (article 60c) includes a finding of guilty, the record shall be transmitted to the Judge Advocate General.

(2) OTHER CASES.—In all other cases, records of trial by court-martial and related documents shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.

(b) CASES FOR DIRECT APPEAL.—

(1) AUTOMATIC REVIEW.—If the judgment includes a sentence of death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable discharge or bad-conduct discharge, or confinement for 2 years or more, the Judge Advocate General shall forward—

(A) the record of trial to the Court of Criminal Appeals for review under section 866(b)(3) of this title (article 66(b)(3)); and

(B) a copy of the record of trial to an appellate defense counsel who shall be detailed to review the case and, upon request of the accused, to represent the accused before the Court of Criminal Appeals.

(2) CASES ELIGIBLE FOR DIRECT APPEAL REVIEW.—

(A) IN GENERAL.—If the case is eligible for direct review under section 866(b)(1) of this title (article 66(b)(1)), the Judge Advocate General shall, upon written request of the accused—

(i) forward a copy of the record of trial to an appellate defense counsel who shall be detailed to review the case and, ~~upon request of the accused,~~ to represent the accused before the Court of Criminal Appeals; and

(ii) ~~upon written request of the accused,~~ forward a copy of the record of trial to civilian counsel provided by the accused.

(B) INAPPLICABILITY.—Subparagraph (A) shall not apply if the accused—  
(i) waives the right to appeal under section 861 of this title (article 61), ~~or~~

(ii) ~~declines in writing the detailing of appellate defense counsel under subparagraph (A)(i).~~

\* \* \* \* \*

1 **SEC. \_\_\_\_ . DEPARTMENT OF DEFENSE SMALL BUSINESS INNOVATION**

2 **RESEARCH AND SMALL BUSINESS TECHNOLOGY TRANSFER**

3 **BUDGET CALCULATION PILOT PROGRAM.**

4 (a) SBIR BUDGET CALCULATION PILOT PROGRAM—

5 (1) PILOT PROGRAM.— Section (9)(f) of the Small Business Act (15 U.S.C.  
6 638(f)) is amended—

7 (A) by redesignating paragraph (4) as paragraph (5); and

8 (B) by inserting after paragraph (3) the following new paragraph (4):

9 “(4) SBIR BUDGET CALCULATION PILOT PROGRAM IN DEPARTMENT OF  
10 DEFENSE.—

11 “(A) The Secretary of Defense shall conduct a budget calculation pilot  
12 program that requires total expenditures for the SBIR program in the Department  
13 of Defense to be calculated as described in subparagraph (B), specifically in  
14 connection with SBIR programs which meet the requirements of this section,  
15 policy directives, and regulations issued under this section.

16 “(B) Beginning in fiscal year 2024, the Department of Defense shall  
17 calculate required budget expenditures for its SBIR program as not less than 3.25  
18 percent of the average of the total research, development, test, and evaluation  
19 extramural budget of the Department for the two most recent fully obligated fiscal  
20 year budgets.

21 “(C) The pilot program under this paragraph shall terminate on September  
22 30, 2027.”.

23 (2) CONFORMING AMENDMENT.—Section 9(f) of such Act is further amended in  
24 paragraph (1) by striking “Except as provided in paragraph (2)(B)” and inserting “Except  
25 as provided in paragraphs (2)(B) and (4)”.

26 (b) STTR BUDGET CALCULATION PILOT PROGRAM.—

27 (1) PILOT PROGRAM.—Section (9)(n) of the Small Business Act (15 U.S.C.  
28 638(n)) is amended by adding at the end the following new paragraph:

29 “(4) STTR BUDGET CALCULATION PILOT PROGRAM IN DEPARTMENT OF  
30 DEFENSE.—

31 “(A) The Secretary of Defense shall conduct a budget expenditure pilot  
32 program that requires total expenditures for STTR to be calculated as described in  
33 subparagraph (B).

34 “(B) Beginning in fiscal year 2024, the Department of Defense shall  
35 calculate required budget expenditures for its STTR program as not less than 0.46  
36 percent of the average of the total research, development, test, and evaluation  
37 extramural budget of the Department for the two most recent fully obligated fiscal  
38 year budgets.

39 “(C) The pilot program under this paragraph shall terminate on September  
40 30, 2027.”.

41 (2) CONFORMING AMENDMENT—Section 9(n) of such Act is further amended in  
42 paragraph (1)(B) by striking “The percentage” and inserting “Except as provided in  
43 paragraph (4), the percentage”.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how  
the legislative text would amend existing law.]**

## Section-by-Section Analysis

This proposal authorizes a pilot program to reduce the time and effort required to calculate the annual budgetary assessments for the SBIR and STTR programs. Currently, an accurate budget assessment cannot be performed until the final appropriation is received and the determination of extramural portions of each program, project, and activity within the final appropriation are estimated. This process delays release of funding for program efforts by months (section (9)(i) currently provides agencies 4 months to provide a report of their budget calculation after enactment of the Appropriation) and requires extensive resources to complete and document. These delays are detrimental to the SBIR and STTR programs' execution and the development and transition of program technology, and has been cited by technical personnel as a reason for reluctance to participate in the programs. Congress has also made clear through subsections (9)(hh) and (9)(ii) that it expects the Department to improve timelines for release of funds, funding decisions, and award times. This pilot will enable calculation of extramural percentages during the previous fiscal year. This percentage can be applied to the budget request to estimate SBIR and STTR budgets and can quickly be applied to final appropriations to provide funds to the programs. This will enable faster funding decisions and award times for both new and on-going work.

This proposal amends sections (9)(f) and (9)(n) by adding new paragraphs requiring the pilot program. No deletions to existing statutory provisions are required. Under new sections 9(f)(4) and 9(n)(4), DoD will be excluded from the standard budget expenditure requirements beginning in FY24 for the SBIR and STTR programs. Each new paragraph (4) provides the period the pilot will be active and the alternative method the DoD will use in determining the SBIR and STTR program expenditure requirements.

**Resource Information:** This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2025 President's Budget.

**Cost Methodology:** This proposal does not seek to change the SBIR/STTR set-aside amount. The resource impact of this proposal is a savings to the Department for the man hours the current computation methodology requires. There are over 1,500 RDTE budget lines across 16 components/organizations that must be assessed, taking approximately four months of effort to complete, or 25% of an FTE. Taken individually, those savings are insignificant. However, some components may have multiple persons working the computations. In the aggregate, if enacted, this proposal would allow a low estimate of \$400K Department-wide to be reallocated to other priority requirements. (25% of an FTE x ~\$100K/FTE x 16 components = \$400K)

**Changes to Existing Law:** This proposal would amend sections (9)(f) and (9)(n) of the Small Business Act (15 U.S.C. 638) as follows:

### Sec. 9. Research and Development

\*\*\*\*\*

- (f) Federal agency expenditures for SBIR program**
- (1) Required expenditure amounts**

Except as provided in paragraphs (2)(B) and (4), each Federal agency which has an extramural budget for research or research and development in excess of \$100,000,000 for fiscal year 1992, or any fiscal year thereafter, shall expend with small business concerns-

- (A) not less than 1.5 percent of such budget in each of fiscal years 1993 and 1994;
- (B) not less than 2.0 percent of such budget in each of fiscal years 1995 and 1996;
- (C) not less than 2.5 percent of such budget in each of fiscal years 1997 through 2011;
- (D) not less than 2.6 percent of such budget in fiscal year 2012;
- (E) not less than 2.7 percent of such budget in fiscal year 2013;
- (F) not less than 2.8 percent of such budget in fiscal year 2014;
- (G) not less than 2.9 percent of such budget in fiscal year 2015;
- (H) not less than 3.0 percent of such budget in fiscal year 2016; and
- (I) not less than 3.2 percent of such budget in fiscal year 2017 and each fiscal year thereafter.

## **(2) Limitations**

A Federal agency shall not-

(A) use any of its SBIR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses; or

(B) make available for the purpose of meeting the requirements of paragraph (1) an amount of its extramural budget for basic research which exceeds the percentages specified in paragraph (1).

## **(3) Exclusion of certain funding agreements**

Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than an SBIR program shall not be considered to meet any portion of the percentage requirements of paragraph (1).

## **(4) SBIR budget calculation pilot program in Department of Defense.—**

(A) The Secretary of Defense shall establish and conduct a budget calculation pilot program that requires total expenditures for the SBIR program in the Department of Defense to be calculated as described in subparagraph (B), specifically in connection with SBIR programs which meet the requirements of this section, policy directives, and regulations issued under this section.

(B) Beginning in fiscal year 2024, the Department of Defense shall calculate required budget expenditures for its SBIR program as not less than 3.25 percent of the average of the total research, development, test, and evaluation extramural budget of the Department for the two most recent fully obligated fiscal year budgets.

(C) The pilot program under this paragraph shall terminate on September 30, 2027.

## **(4-5) Rule of construction**

Nothing in this subsection may be construed to prohibit a Federal agency from expending with small business concerns an amount of the extramural budget for research or research and development of the agency that exceeds the amount required under paragraph (1).



\*\*\*\*\*

**(n) Required expenditures for STTR by Federal agencies**

**(1) Required expenditure amounts**

**(A) In general**

With respect to each fiscal year through fiscal year 2022, each Federal agency that has an extramural budget for research, or research and development, in excess of \$1,000,000,000 for that fiscal year, shall expend with small business concerns not less than the percentage of that extramural budget specified in subparagraph (B), specifically in connection with STTR programs that meet the requirements of this section and any policy directives and regulations issued under this section.

**(B) Expenditure amounts**

Except as provided in paragraph (4), the The percentage of the extramural budget required to be expended by an agency in accordance with subparagraph (A) shall be-

- (i) 0.15 percent for each fiscal year through fiscal year 2003;
- (ii) 0.3 percent for each of fiscal years 2004 through 2011;
- (iii) 0.35 percent for each of fiscal years 2012 and 2013;
- (iv) 0.40 percent for each of fiscal years 2014 and 2015; and
- (v) 0.45 percent for fiscal year 2016 and each fiscal year thereafter.

**(2) Limitations**

A Federal agency shall not-

- (A) use any of its STTR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses, or, in the case of a small business concern or a research institution, costs associated with salaries, expenses, and administrative overhead (other than those direct or indirect costs allowable under guidelines of the Office of Management and Budget and the governmentwide Federal Acquisition Regulation issued in accordance with section 1303(a)(1) of title 41); or
- (B) make available for the purpose of meeting the requirements of paragraph (1) an amount of its extramural budget for basic research which exceeds the percentage specified in paragraph (1).

**(3) Exclusion of certain funding agreements**

Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than an STTR program shall not be considered to meet any portion of the percentage requirements of paragraph (1).

**(4) STTR budget calculation pilot program in Department of Defense.—**

(A) The Secretary of Defense shall conduct a budget expenditure pilot program that requires total expenditures for STTR to be calculated as described in subparagraph (B).

(B) Beginning in fiscal year 2024, the Department of Defense shall calculate required budget expenditures for its STTR program as not less than 0.46 percent of the average of the total research, development, test, and evaluation extramural budget of the Department for the two most recent fully obligated fiscal year budgets.

(C) The pilot program under this paragraph shall terminate on September 30, 2027.

1 **SEC. \_\_\_\_ . ELIGIBILITY OF SPACE FORCE OFFICERS FOR MEMBERSHIP ON**  
2 **ARMED FORCES RETIREMENT HOME ADVISORY COUNCIL.**

3 (a) CHIEF PERSONNEL OFFICERS DEFINED.—Section 1502(5) of the Armed Forces  
4 Retirement Home Act of 1991 (24 U.S.C. 401(5)) is amended—

5 (1) in subparagraph (D), by striking “and” at the end;

6 (2) in subparagraph (E), by striking the period at the end and inserting “; and”;

7 and

8 (3) by adding at the end the following new subparagraph:

9 “(F) the Deputy Chief of Space Operations for Human Capital of the  
10 Space Force.”.

11 (b) SENIOR NONCOMMISSIONED OFFICERS DEFINED.—Section 1502(6) of such Act (24  
12 U.S.C. 401(6)) is amended by adding at the end the following new subparagraph:

13 “(F) The Chief Master Sergeant of the Space Force.”.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]**

### **Section-by-Section Analysis**

This proposal would amend section 1502 of the Armed Forces Retirement Home (AFRH) Act of 1991 (24 U.S.C. 401) to reflect the addition of the Space Force as one of the Armed Forces by adding the branch’s senior enlisted advisor and a representative from its chief of personnel as possible members of the AFRH Advisory Council. Space Force veterans and retirees are automatically eligible for AFRH residency since the Space Force is listed in the definition of the term “armed forces” as set forth in 10 U.S.C. 101(a)(4).

**Resource Information:** This proposal has no budgetary impact.

**Changes to Existing Law:** The proposal would amend section 1502 of the Armed Forces Retirement Home Act of 1991 (24 U.S.C. 401) as follows:

### **SEC. 1502. DEFINITIONS.**

For purposes of this title:

(1) The term “Retirement Home” includes the institutions established under section 1511, as follows::

(A) The Armed Forces Retirement Home—Washington.

(B) The Armed Forces Retirement Home—Gulfport.

(2) The terms “Armed Forces Retirement Home Trust Fund” and “Fund” mean the Armed Forces Retirement Home Trust Fund established under section 1519(a).

(3) The term “Advisory Council” means the Armed Forces Retirement Home Advisory Council established under section 1516.

(4) The term “Resident Advisory Committee” means an elected body of residents at a facility of the Retirement Home established under section 1516a.

(5) The term “chief personnel officers” means—

(A) the Deputy Chief of Staff for Personnel of the Army;

(B) the Chief of Naval Personnel;

(C) the Deputy Chief of Staff for Personnel of the Air Force;

(D) the Deputy Commandant of the Marine Corps for Manpower and Reserve Affairs; ~~and~~

(E) the Assistant Commandant of the Coast Guard for Human Resources; ;

and

(F) the Deputy Chief of Space Operations for Human Capital of the Space Force.

(6) The term “senior noncommissioned officers” means the following:

(A) The Sergeant Major of the Army.

(B) The Master Chief Petty Officer of the Navy.

(C) The Chief Master Sergeant of the Air Force.

(D) The Sergeant Major of the Marine Corps.

(E) The Master Chief Petty Officer of the Coast Guard.

(F) The Chief Master Sergeant of the Space Force.

1 **SEC. \_\_\_. HEALTH CARE PROFESSIONALS: ENHANCED APPOINTMENT AND**  
2 **COMPENSATION AUTHORITY FOR PERSONNEL FOR CARE AND**  
3 **TREATMENT OF WOUNDED AND INJURED MEMBERS OF THE**  
4 **ARMED FORCES.**

5 Section 1599c(b) of title 10, United States Code, is amended, in paragraphs (1) and (2),  
6 by striking “December 31, 2025” and inserting “December 31, 2030”.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]**

**Section-by-Section Analysis**

This proposal would amend section 1599c of title 10, United States Code (U.S.C.), to extend through December 31, 2030, the authority of the Secretary of Defense to exercise authorities under chapter 74 of title 38, U.S.C., for purposes of the recruitment, employment, and retention of civilian health care professionals for the Department of Defense (DoD).

DoD may exercise certain hiring authorities granted under title 38 to increase competitiveness in the hiring and retention of health care personnel via two channels. The first channel is section 1599c, which authorizes DoD to use any authority for the appointment and pay of health care personnel under chapter 74 of title 38 for the purposes of the recruitment, employment, and retention of civilian health care professionals for the Department of Defense. DoD’s authority to use title 38 authorities under section 1599c expires on December 31, 2025. The second channel is a delegation agreement between the Office of Personnel Management (OPM) and DoD, effective September 14, 2023. The title 38 authorities granted to DoD under this delegation agreement are directly related to pay rates and systems, premium pay, classification, and hours of work. DoD’s authority under the delegation agreement expires on June 30, 2027, and may be extended by OPM.

There is national shortage of health care personnel in the United States. Current OPM qualification standards for title 5, U.S.C., competitive service appointments for some critical health occupations in the federal government, such as nurses, prohibit DoD from being competitive with the Department of Veterans Affairs and the private sector in recruiting and retaining health care personnel. A recent review of data (September 2020 – 2022) identified 4,666 open registered nurse (RN) job announcements listed on the federal government’s USAJOBS website with 95,420 applications received. However, only 32,836 of the applicants qualified under the current OPM standards. Of the 4,666 RN job announcements, 1,333 (29%) did not have a selection made due to candidate declinations, thus leaving the position open and increasing the time to hire. The Defense Health Agency (DHA) is analyzing what leads to the candidate declinations. Some theories include insufficient pay, undesirable geographic location of the position, and unreasonable delays in the hiring process. Currently DHA has more than

2,390 vacant RN positions and 1,906 open RN recruitment actions. Of the 10,521 open hiring actions within DHA, 7,393 are for health care occupations.

**Resource Information:** This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2025 President’s Budget.

**Changes to Existing Law:** This proposal would amend section 1599c of title 10, United States Code, as follows:

**§ 1599c. Health care professionals: enhanced appointment and compensation authority for personnel for care and treatment of wounded and injured members of the armed forces**

(a) IN GENERAL.—(1) The Secretary of Defense may, at the discretion of the Secretary, exercise any authority for the appointment and pay of health care personnel under chapter 74 of title 38 for purposes of the recruitment, employment, and retention of civilian health care professionals for the Department of Defense if the Secretary determines that the exercise of such authority is necessary in order to provide or enhance the capacity of the Department to provide care and treatment for members of the armed forces who are wounded or injured on active duty in the armed forces and to support the ongoing patient care and medical readiness, education, and training requirements of the Department of Defense.

(2)(A) For purposes of section 3304 of title 5, the Secretary of Defense may—

(i) designate any category of medical or health professional positions within the Department of Defense as a shortage category occupation or critical need occupation; and

(ii) utilize the authority in such section to recruit and appoint qualified persons directly in the competitive service to positions so designated.

(B) In using the authority provided by this paragraph, the Secretary shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5.

(C) Any designation by the Secretary for purposes of subparagraph (A)(i) shall be based on an analysis of current and future Department of Defense workforce requirements.

(b) TERMINATION OF AUTHORITY.—(1) The authority of the Secretary of Defense under subsection (a)(1) to exercise authorities available under chapter 74 of title 38 for purposes of the recruitment, employment, and retention of civilian health care professionals for the Department of Defense expires December 31, ~~2025~~ 2030.

(2) The Secretary may not appoint a person to a position of employment under subsection (a)(2) after December 31, ~~2025~~ 2030.

1 **SEC. \_\_\_\_ . ENHANCING REQUIREMENTS FOR INFORMATION RELATING TO**  
2 **SUPPLY CHAIN RISK.**

3 Section 3252 of title 10, United States Code, is amended—

4 (1) in subsection (b)—

5 (A) by striking paragraph (1) and inserting the following new paragraph:

6 “(1) consulting with procurement or other relevant officials of the covered  
7 agency;”;

8 (B) in paragraph (2) in the matter preceding subparagraph (A), by striking

9 “with the concurrence of the Under Secretary of Defense for Acquisition and  
10 Sustainment;” and

11 (C) in paragraph (3)—

12 (i) by striking subparagraphs (A), (B), and (C) and inserting the  
13 following new subparagraph:

14 “(A) a summary of the risk assessment that serves as the basis for the  
15 written determination required by paragraph (2); and”; and

16 (ii) by redesignating subparagraph (D) as subparagraph (B);

17 (2) by striking subsection (c); and

18 (3) by redesignating subsections (d) and (e) as subsections (c) and (d),

19 respectively.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]**

**Section-by-Section Analysis**

This proposal would amend section 3252 of title 10, United States Code to remove unnecessary administrative burden for the Secretary of Defense (SECDEF) and other Department of Defense (DoD) senior leaders, enhancing the ability and flexibility for DoD

components to manage supply chain risk. The proposal would remove the restriction on delegation and eliminate specific coordination, approval, and risk assessment requirements for the covered procurement action process.

Removal of restriction on delegation: Section 3252 currently limits the ability of SECDEF to delegate risk management authority to only persons at the service acquisition executive level or higher. This proposal removes that limitation, allowing SECDEF the ability to delegate the authority and meet the specific needs of DoD components outside of the military departments.

Currently, only SECDEF and the Secretaries of the military departments, may carry out covered procurement actions involving acquisition of a national security system (NSS), or purchase of an item of information technology for inclusion in a NSS (i.e., “covered procurements”). Such officials may also delegate that authority to their Defense Acquisition Executive (in the case of SECDEF) or Service Acquisition Executive (with regard to the listed military department secretaries). The remaining DoD components lack, and cannot be delegated, similar authority.

In contrast to the authorities granted to the Secretaries of the military departments, the other DoD component heads must obtain approval from the SECDEF or SECDEF’s designated Defense Acquisition Executive (DAE), the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)), to take a covered procurement action to mitigate supply chain risk. Such “covered procurement actions” are unique because they allow exclusion of high-risk sources without requiring disclosure to the excluded source of the typically highly-classified information supporting the exclusion. Furthermore, if USD(A&S) or a Secretary of a military department exercises such authority to limit disclosure, no associated “covered procurement action” can be challenged through the Government Accountability Office (GAO) or any Federal court.

Currently, the Secretary of Defense cannot delegate such covered procurement action authority to anyone other than the USD(A&S). Since DoD component heads, including defense agency directors, do not meet the definition of a “head of a covered agency” or a permitted recipient of delegated authority, DoD components other than the military departments lack independent authority to take a covered procurement action. Thus, regardless of the mission needs and circumstances of the affected DoD component, each such component must request USD(A&S) exercise the authority under section 3252 on its behalf in each and every covered procurement action.

Permitting SECDEF broader delegation authority will allow SECDEF to provide authority to all appropriate DoD component heads, enabling synchronization of efforts to address threats to NSS. The proposal would create a common standard for DoD, empower collaboration, and prevent unnecessary delay – especially in joint acquisitions impacting NSS. DoD defense intelligence enterprise components other than the military departments will particularly benefit from this proposal due to their higher volume of covered procurements and the probable need to withhold information supporting exclusion from the excluded source.

Removing DoD-level approval, coordination, and risk assessment requirements: The proposal would also remove the USD(A&S) and Chief Information Officer joint recommendation requirement, the USD(I&S) risk assessment requirement, and the USD(A&S) concurrence

requirement, restoring SECDEF flexibility in carrying out section 3252 and allowing timely, decentralized execution of covered procurement actions, while maintaining essential congressional notification contents. Removing those requirements from the statute and substituting notification and internal consultation requirements aligns section 3252 with similar authorities already available to non-DoD intelligence community elements under section 309 of the Intelligence Authorization Act for Fiscal Year 2012 (50 U.S.C. 3334e). Removing the requirements from the statute also allows SECDEF to tailor the process for taking covered procurement actions for the specific DoD component receiving delegated authority. Finally, removing the requirement for a justification and approval document described in section 3204(e)(2) of title 10, United States Code, accomplishes two valuable improvements. First, it avoids duplicating the determination contents already covered by section 3252(b)(2) and (b)(3)(D). Second, it aligns the exclusions with the authority to exclude sources in section 3203 of title 10.

**Resource Information:** This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2025 President’s Budget. However, adopting the legislative proposal may reduce administrative burden and associated costs. Although currently challenging to quantify, providing a more efficient and flexible SCRM covered procurement action authority may potentially shorten source selection timelines when a DoD component outside the military departments identifies a high-risk offeror, potentially leading to faster contract awards. Furthermore, allowing for more flexible delegation may alleviate the administrative burden of exercising 10 U.S.C. § 3252 authority throughout the DoD fourth estate.

**Changes to Existing Law:** This proposal would amend section 3252 of title 10, United States Code, as follows:

### **§ 3252. Requirements for information relating to supply chain risk**

(a) AUTHORITY.—Subject to subsection (b), the head of a covered agency may—  
    (1) carry out a covered procurement action; and  
    (2) limit, notwithstanding any other provision of law, in whole or in part, the disclosure of information relating to the basis for carrying out a covered procurement action.

(b) DETERMINATION AND NOTIFICATION.—The head of a covered agency may exercise the authority provided in subsection (a) only after—

~~(1) obtaining a joint recommendation by the Under Secretary of Defense for Acquisition and Sustainment and the Chief Information Officer of the Department of Defense, on the basis of a risk assessment by the Under Secretary of Defense for Intelligence and Security, that there is a significant supply chain risk to a covered system;~~

~~(1) consulting with procurement or other relevant officials of the covered agency;~~  
~~(2) making a determination in writing, in unclassified or classified form, with the concurrence of the Under Secretary of Defense for Acquisition and Sustainment, that—~~

~~(A) use of the authority in subsection (a)(1) is necessary to protect national security by reducing supply chain risk;~~



(B) less intrusive measures are not reasonably available to reduce such supply chain risk; and

(C) in a case where the head of the covered agency plans to limit disclosure of information under subsection (a)(2), the risk to national security due to the disclosure of such information outweighs the risk due to not disclosing such information; and

(3) providing a classified or unclassified notice of the determination made under paragraph (2) to the appropriate congressional committees, which notice shall include—

~~(A) the information required by section 3204(e)(2) of this title;~~

~~(B) the joint recommendation by the Under Secretary of Defense for Acquisition and Sustainment and the Chief Information Officer of the Department of Defense as specified in paragraph (1);~~

~~(C) a summary of the risk assessment by the Under Secretary of Defense for Intelligence 1 that serves as the basis for the joint recommendation specified in paragraph (1); and~~

(A) a summary of the risk assessment that serves as the basis for the written determination required by paragraph (2); and

~~(D)~~(B) a summary of the basis for the determination, including a discussion of less intrusive measures that were considered and why they were not reasonably available to reduce supply chain risk.

~~(e) DELEGATION.—The head of a covered agency may not delegate the authority provided in subsection (a) or the responsibility to make a determination under subsection (b) to an official below the level of the service acquisition executive for the agency concerned.~~

~~(d)~~(c) LIMITATION ON DISCLOSURE.—If the head of a covered agency has exercised the authority provided in subsection (a)(2) to limit disclosure of information—

(1) no action undertaken by the agency head under such authority shall be subject to review in a bid protest before the Government Accountability Office or in any Federal court; and

(2) the agency head shall—

(A) notify appropriate parties of a covered procurement action and the basis for such action only to the extent necessary to effectuate the covered procurement action;

(B) notify other Department of Defense components or other Federal agencies responsible for procurements that may be subject to the same or similar supply chain risk, in a manner and to the extent consistent with the requirements of national security; and

(C) ensure the confidentiality of any such notifications.

~~(e)~~(d) DEFINITIONS.—In this section:

(1) HEAD OF A COVERED AGENCY.—The term “head of a covered agency” means each of the following:

(A) The Secretary of Defense.

(B) The Secretary of the Army.

(C) The Secretary of the Navy.

(D) The Secretary of the Air Force.

(2) COVERED PROCUREMENT ACTION.—The term “covered procurement action” means any of the following actions, if the action takes place in the course of conducting a covered procurement:

(A) The exclusion of a source that fails to meet qualification standards established in accordance with the requirements of section 3243 of this title for the purpose of reducing supply chain risk in the acquisition of covered systems.

(B) The exclusion of a source that fails to achieve an acceptable rating with regard to an evaluation factor providing for the consideration of supply chain risk in the evaluation of proposals for the award of a contract or the issuance of a task or delivery order.

(C) The decision to withhold consent for a contractor to subcontract with a particular source or to direct a contractor for a covered system to exclude a particular source from consideration for a subcontract under the contract.

(3) COVERED PROCUREMENT.—The term “covered procurement” means—

(A) a source selection for a covered system or a covered item of supply involving either a performance specification, as provided in section 3206(a)(3)(B) of this title, or an evaluation factor, as provided in section 3206(b)(1) of this title, relating to supply chain risk;

(B) the consideration of proposals for and issuance of a task or delivery order for a covered system or a covered item of supply, as provided in section 3406(d)(3) of this title, where the task or delivery order contract concerned includes a contract clause establishing a requirement relating to supply chain risk; or

(C) any contract action involving a contract for a covered system or a covered item of supply where such contract includes a clause establishing requirements relating to supply chain risk.

(4) SUPPLY CHAIN RISK.—The term “supply chain risk” means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system.

(5) COVERED SYSTEM.—The term “covered system” means a national security system, as that term is defined in section 3552(b)(6) of title 44.

(6) COVERED ITEM OF SUPPLY.—The term “covered item of supply” means an item of information technology (as that term is defined in section 11101 of title 40) that is purchased for inclusion in a covered system, and the loss of integrity of which could result in a supply chain risk for a covered system.

(7) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) in the case of a covered system included in the National Intelligence Program or the Military Intelligence Program, the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the congressional defense committees; and

(B) in the case of a covered system not otherwise included in subparagraph (A), the congressional defense committees.

1 **SEC. \_\_\_. EXPANDED COMMAND NOTIFICATIONS TO VICTIMS OF DOMESTIC**  
2 **VIOLENCE.**

3 Section 549 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law  
4 116–92; 10 U.S.C. 806b note) is amended—

5 (1) in the section heading, by striking “**OFFENSE**” and inserting “**AND**  
6 **DOMESTIC VIOLENCE-RELATED OFFENSES**”;

7 (2) in the first sentence—

8 (A) by inserting “, or a case of an alleged domestic violence-related  
9 offense (as defined by the Secretary),” after “of title 10, United States Code”;  
10 and

11 (B) by striking “periodically notify the victim” and inserting “ensure that  
12 the victim (or the victim’s legal counsel if so requested by the victim) is  
13 periodically notified”; and

14 (3) in the last sentence, by striking “notify the victim” and inserting “ensure that  
15 the victim (or the victim’s legal counsel if so requested by the victim) is notified”.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]**

### **Section-by-Section Analysis**

This proposal would amend section 549 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; 10 U.S.C. 806b note) (section 549) to require commanders to ensure that a domestic violence victim (or their Special Victims’ Counsel or other legal representative) is notified of a disciplinary action taken in a domestic violence case not referred to court-martial. Such notifications keep victims apprised of the disciplinary process and provide them with information needed to make important decisions about their future for themselves and their families.

Section 549 currently requires commanders to notify victims of sex-related cases (as defined by 10 U.S.C. 1044e(h)) of the final disposition of cases not referred to court-martial, which includes nonjudicial punishment, other administrative action, or no action. Section 549

includes an exception to 5 U.S.C. 552a (popularly known as the Privacy Act of 1974) to authorize these types of notifications; however, 5 U.S.C. 552a still materially limits the scope and detail of notifications to victims in non-court-martial cases that are not sex-related. This proposal would expand the category of cases requiring victim notification to include domestic violence-related cases, which would generally include victims under Article 128b of the Uniform Code of Military Justice (10 U.S.C. 128b).

The military departments have an interest in ensuring domestic violence victims are informed of the disposition of cases not referred to court-martial. According to a 2021 Government Accountability Office report on the Department of Defense's response to domestic abuse, a significant percentage of victims interviewed perceived the command either took no action or did not take the reports of abuse seriously. Victims surveyed also reported that the perception of "no command action" was a barrier to reporting abuse. The proposed expanded notification would help to promote confidence in a military department's response to domestic violence and encourage victims to report.

This proposal would also clarify that commanders may effect notification through other means as may be desired by the victim. This proposed modification adds flexibility to the notification process and recognizes that victims may wish to be informed through their Special Victims' Counsel or other detailed or retained counsel. This modification would facilitate the notification process in a manner that keeps a victim informed and ensures that their wishes are respected.

**Resource Information:** This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2025 President's Budget request.

**Changes to Existing Law:** This proposal would amend section 549 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92; 10 U.S.C. 806b note) as follows:

**SEC. 549. NOTICE TO VICTIMS OF ALLEGED SEX-RELATED AND DOMESTIC VIOLENCE-RELATED OFFENSES OF PENDING OF FURTHER ADMINISTRATIVE ACTION FOLLOWING A DETERMINATION NOT TO REFER TO TRIAL BY COURT-MARTIAL.**

Notwithstanding section 552a of title 5, United States Code, and under regulations prescribed by the Secretary of Defense, upon a determination not to refer a case of an alleged sex-related offense (as defined in section 1044e(h) of title 10, United States Code), or a case of an alleged domestic violence-related offense (as defined by the Secretary), for trial by court-martial under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), the commander making such determination shall ~~periodically notify the victim~~ ensure that the victim (or the victim's legal counsel if so requested by the victim) is periodically notified of the status of a final determination on further action on such case, whether non-judicial punishment under section 815 of such title (article 15 of the Uniform Code of Military Justice), other administrative action, or no further action. Such notifications shall continue not less frequently than monthly until such final determination. Upon such final determination, the commander shall ~~notify the victim~~ ensure that the victim (or the victim's legal counsel if so requested by the

victim) is notified of the type of action taken on such case, the outcome of the action (including any punishments assigned or characterization of service, as applicable), and such other information as the commander determines to be relevant.

1 **SEC. \_\_\_. EXTENSION OF AUTHORITY FOR REIMBURSEMENT OF CERTAIN**  
2 **COALITION NATIONS FOR SUPPORT PROVIDED TO UNITED**  
3 **STATES MILITARY OPERATIONS.**

4 (a) EXTENSION.—Subsection (a) of section 1233 of the National Defense Authorization  
5 Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 393), as most recently amended by  
6 section 1205 of the National Defense Authorization Act for Fiscal Year 2024 (Public Law 118-  
7 31), is further amended in the matter preceding paragraph (1) by striking “beginning on October  
8 1, 2023, and ending on December 31, 2024, for overseas contingency operations” and inserting  
9 “beginning on October 1, 2024, and ending on December 31, 2025”.

10 (b) MODIFICATION TO LIMITATIONS.—Subsection (d)(1) of such section is amended by  
11 striking “beginning on October 1, 2023, and ending on December 31, 2024, may not exceed  
12 \$15,000,000” and inserting “beginning on October 1, 2024, and ending on December 31, 2025,  
13 may not exceed \$75,000,000”.

**[Note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text above would amend existing law.]**

**Section-by-Section Analysis**

This proposal would extend through December 31, 2025, the current authority to use funds made available for the Department of Defense for operation and maintenance, Defense-wide activities: (1) to reimburse any key cooperating nation (other than Pakistan) for certain support provided by that nation to U.S. military operations in Afghanistan, Iraq, or Syria; and (2) to provide certain assistance to any key cooperating nation supporting U.S. military operations in Afghanistan, Iraq, or Syria, subject to the conditions and limitations in the statute. The proposal would also increase the limit on the aggregate amount of payments available under the authority for the period of the extension from \$15,000,000 to \$75,000,000.

**Resource Information:** The resources impacted by this proposal are reflected in the table below and are included within the Fiscal Year 2025 President’s Budget request.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Coalition Support Funds (CSF)	\$73					Operation and Maintenance, Defense-wide	04	4GTD DSCA	
Total	\$73								

**Changes to Existing Law:** This proposal would make the following changes to section 1233 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 393):

**SEC. 1233. REIMBURSEMENT OF CERTAIN COALITION NATIONS FOR SUPPORT PROVIDED TO UNITED STATES MILITARY OPERATIONS.**

(a) **AUTHORITY.**—From funds made available for the Department of Defense for the period beginning on ~~October 1, 2023~~ October 1, 2024, and ending on ~~December 31, 2024~~ December 31, 2025, for ~~overseas contingency operations~~ for operation and maintenance, Defense-wide activities, the Secretary of Defense may reimburse any key cooperating nation (other than Pakistan) for—

- (1) logistical and military support provided by that nation to or in connection with United States military operations in Afghanistan, Iraq, or Syria; and
- (2) logistical, military, and other support, including access, provided by that nation to or in connection with United States military operations described in paragraph (1).

(b) **OTHER SUPPORT.**—Using funds described in subsection (a)(2), the Secretary of Defense may also assist any key cooperating nation supporting United States military operations in Afghanistan, Iraq, or Syria through the following:

- (1) The provision of specialized training to personnel of that nation in connection with such operations, including training of such personnel before deployment in connection with such operations.
- (2) The procurement and provision of supplies to that nation in connection with such operations.
- (3) The procurement of specialized equipment and the loaning of such specialized equipment to that nation on a non-reimbursable basis in connection with such operations.

(c) **AMOUNTS OF REIMBURSEMENT.**—

- (1) **IN GENERAL.**—Reimbursement authorized by subsection (a) may be made in such amounts as the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of the Office of Management and Budget, may

determine, based on documentation determined by the Secretary of Defense to adequately account for the support provided.

(2) SUPPORT.—Support authorized by subsection (b) may be provided in such amounts as the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of the Office of Management and Budget, considers appropriate.

(d) LIMITATIONS.—

(1) LIMITATION ON AMOUNT.— The aggregate amount of reimbursements made under subsection (a) and support provided under subsection (b) during the period beginning on ~~October 1, 2023~~ October 1, 2024, and ending on ~~December 31, 2024~~ December 31, 2025, may not exceed ~~\$15,000,000~~ \$75,000,000.

(2) PROHIBITION ON CONTRACTUAL OBLIGATIONS TO MAKE PAYMENTS.—The Secretary of Defense may not enter into any contractual obligation to make a reimbursement under the authority in subsection (a).

(e) NOTICE TO CONGRESS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary of Defense shall notify the appropriate congressional committees not later than 15 days before making any reimbursement under the authority in subsection (a) or providing any support under the authority in subsection (b).

(2) EXCEPTION.—The requirement to provide notice under paragraph (1) shall not apply with respect to a reimbursement for access based on an international agreement.

(f) QUARTERLY REPORTS.—The Secretary of Defense shall submit to the appropriate congressional committees on a quarterly basis a report on any reimbursements made under the authority in subsection (a), and any support provided under the authority in subsection (b), during such quarter.

(g) DEFINITION.—In this section, the term “appropriate congressional committees” means—

(1) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives; and

(2) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate.



1    **SEC. \_\_\_\_ . IMPROVEMENTS TO AIR FORCE FLYING AND SIMULATOR**  
2                   **INSTRUCTOR FUNCTION.**

3           (a) **AUTHORITY.**—In carrying out flying and simulator instructor functions of the  
4 Department of the Air Force, the Secretary of the Air Force—

5                   (1) may use such mix of civilian personnel and contractor personnel as the  
6 Secretary determines appropriate to ensure pilot production that leverages commercial  
7 sector capabilities and sources; and

8                   (2) may realign Department of the Air Force civilian flying and simulator  
9 instructor functions in occupational series 2181 as necessary for the purposes of  
10 paragraph (1).

11           (b) **WAIVER OF CERTAIN STATUTES.**—The Secretary of the Air Force may carry out the  
12 authority under subsection (a) without regard to the following:

13                   (1) Section 2461 of title 10, United States Code.

14                   (2) Section 741 of the Financial Services and General Government Appropriations  
15 Act, 2023 (division E of Public Law 117–328), and successor provisions.

16                   (3) Section 8046 of the Department of Defense Appropriations Act, 2023  
17 (division C of Public Law 117-328), and successor provisions.

18           (c) **SUNSET.**—The authority under subsection (a) shall expire on December 31, 2029.

**Section-by-Section Analysis**

Simulator instructors are integral to training pilots who in turn are key to the capability of the Department of the Air Force and the United States to project air power and provide deterrence. This proposal enables the Department of the Air Force to ensure pilot production. For over a decade, approximately 10% to 20% of Air Force civilian simulator instructor positions have remained vacant. The vacancies have continued to increase, such that in 2021, the average vacancy percentage across the following three Air Force bases was 22.5%: 29% at Laughlin AFB, 26% at Vance AFB, 23% at Columbus AFB, and 8% at Sheppard AFB. This

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proposal would assist the Department of the Air Force in filling vacancies in these vital positions while also leveraging commercial innovation in this space.

Section 2461 of title 10, United States Code, provides that functions performed by Department of Defense civilian employees may not be converted, in whole or in part, to performance by a contractor unless the conversion is based on the results of a public-private competition that meets certain requirements, including certain costs of performance. An analysis conducted by the Air Force in 2021 determined that those requirements could not be met with respect to flying and simulator instructor functions. When coupled with annual appropriations Act provisions (most recently, section 8046 of the Department of Defense Appropriations Act, 2023 (division C of Public Law 117–328) and section 741 of the Financial Services and General Government Appropriations Act (division E of Public Law 117–328)), that prohibit Government agencies from converting civilian functions to contract performance without conducting public-private competitions, the result limits the Air Force from being able to take advantage of opportunities to improve flying and simulator instruction capabilities to optimize lethality and readiness while maximizing fiscal efficiency and organizational agility.

Consequently, this proposal seeks relief from section 2461 of title 10, United States Code, and associated annual appropriations Act provisions to enable the Department of the Air Force to directly transfer civilian flying and simulator instruction functions to contractor performance in order to leverage commercial ingenuity, innovation, and best practices in flying and simulator instruction. Although there is relief from the strictures in section 2461 of title 10 and section 8046 of the 2023 annual defense appropriations Act (and successor provisions) through exceptions set forth in those provisions, ultimately that relief is unavailing given the text of section 741 of the Financial Services and General Government Appropriations Act, 2023 (and successor provisions).

In carrying out the authority that would be provided by this proposal, the Department will ensure that Department of the Air Force employees currently performing flying and simulator instruction functions are not negatively affected. The proposal is to resolve the difficulty in filling vacancies and not designed to support the outsourcing of work performed by civilians. The proposal would not expand the current workforce.

**Resource Information:** The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2025 President’s Budget that are impacted by this proposal.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Civilian	(\$51.57)	(\$52.65)	(\$53.78)	(\$54.91)	(\$56.01)	Operation and Maintenance, Air Force	3	32B	84741F
Contract	\$105.00	\$107.10	\$109.24	\$111.43	\$113.66	Operation and Maintenance, Air Force	3	32B	84741F
Total	\$53.43	\$54.45	\$55.46	\$56.52	\$57.65	--	--	--	--

PRE-DECISIONAL INTERNAL EXECUTIVE BRANCH DRAFT

**Manpower Requirements:** The table below illustrates all current funded undergraduate flying training CSI requirements (civilian). This does not include future T-7 operations as there is no current CSI funding and the decision on GS or contract for the T-7 has not been made.

PERSONNEL IMPACT (END STRENGTH)					
	FY 25	FY 26	FY27	FY28	FY29
USAF					
PEC 84700A	49	49	49	49	49
PEC 84741A	320	320	320	320	320
PEC 84743D	26	26	26	26	26
Total	395	395	395	395	395

**Changes to Existing Law:** This proposal would not change the text of any existing provision of law.

1 **SEC. \_\_\_. INCREASE IN PERCENTAGE LIMITATIONS ON VALUE OF UNITED**  
2 **STATES INVESTMENT IN MILITARY HOUSING PRIVATIZATION**  
3 **INITIATIVE PROJECTS.**

4 Section 2875(c) of the title 10, United States Code is amended—  
5 (1) in paragraph (1), by striking “33 1/3 percent” and inserting “80 percent”; and  
6 (2) in paragraph (2), by striking “45 percent” and inserting “80 percent”.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]**

**Section-by-Section Analysis**

This proposal would amend section 2875 of title 10, United States Code (Investments), to increase to 80 percent each of the two current limitations under subsection (c) of that section on the amount of Government investment in Military Housing Privatization Initiative (MHPI) projects under that section. The increase in these limitations would allow the Department of the Air Force (DAF) to ensure sufficient sustainment and reinvestment funding for its MHPI projects that are facing funding shortfalls as compared to what these projects would achieve under the current limitations.

Paragraph (1) of section 2875(c) limits the cash amount of an investment to one-third of the capital cost of the project. Paragraph (2) of that section limits the total combined value of the investment (if the Secretary concerned makes a cash investment and conveys land or facilities as part of the investment) to 45 percent of the capital cost of the project.

The DAF proposes a change to those investment limitations due to market conditions and other uncontrollable factors that have adversely affected some of its MHPI projects. If not adequately addressed, these shortfalls may result in substandard housing conditions and services that lead to quality of life, retention, and mission capable impacts on the service members and their families who live in MHPI housing.

**Resource Information:** This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2025 President’s Budget.

**Changes to Existing Law:** This proposal would amend section 2875 of title 10, United States Code, as follows:

**§2875. Investments**

(a) INVESTMENTS AUTHORIZED.—The Secretary concerned may make investments in an eligible entity carrying out projects for the acquisition or construction of housing units suitable for use as military family housing or as military unaccompanied housing.

(b) FORMS OF INVESTMENT.—An investment under this section may take the form of an acquisition of a limited partnership interest by the United States, a purchase of stock or other equity instruments by the United States, a purchase of bonds or other debt instruments by the United States, or any combination of such forms of investment.

(c) LIMITATION ON VALUE OF INVESTMENT.—(1) The cash amount of an investment under this section in an eligible entity may not exceed an amount equal to ~~33 1/3 percent~~ 80 percent of the capital cost (as determined by the Secretary concerned) of the project or projects that the eligible entity proposes to carry out under this section with the investment.

(2) If the Secretary concerned conveys land or facilities to an eligible entity as all or part of an investment in the eligible entity under this section, the total value of the investment by the Secretary under this section may not exceed an amount equal to ~~45 percent~~ 80 percent of the capital cost (as determined by the Secretary) of the project or projects that the eligible entity proposes to carry out under this section with the investment.

(3) In this subsection, the term “capital cost”, with respect to a project for the acquisition or construction of housing, means the total amount of the costs included in the basis of the housing for Federal income tax purposes.

(d) COLLATERAL INCENTIVE AGREEMENTS.—The Secretary concerned shall enter into collateral incentive agreements with eligible entities in which the Secretary makes an investment under this section to ensure that a suitable preference will be afforded members of the armed forces and their dependents in the lease or purchase, as the case may be, of a reasonable number of the housing units covered by the investment.

1 **SEC. \_\_. MODIFICATION OF AMOUNT THAT MAY BE PAID TO MEMBERS OF**  
2 **THE SELECTED RESERVE IN THE EDUCATION LOAN REPAYMENT**  
3 **PROGRAM**

4 Section 16301(b) of title 10, United States Code, is amended by striking “15” and  
5 inserting “20.”.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]**

**Section-by-Section Analysis**

This proposal would enhance authority for Reserve Components to repay loan amounts in an accelerated manner that will allow members of the Armed Forces to realize the intended benefit of the program under section 16301 of title 10, United States Code. Section 16301 presently limits the annual amount that may be repaid to 15 percent, or \$1000, whichever is greater, which is not repayable until after the period of service is performed. A Reserve Component member essentially has to serve 8 years in the Selected Reserve in order to fully repay the member’s student loans. Under the current recruiting environment, the vast majority of applicants contract for six years. As a result, soldiers do not fully realize full repayment of their student loan(s). This limitation reduces the effectiveness of the incentive and creates a sense of distrust amongst soldiers who are unable to fully realize the stated benefit of this incentive. 59 percent of Army National Guard (ARNG) soldiers with Student Loan Repayment Program (SLRP) contracts have student loan debt between \$32,000 and \$50,000. 29 percent of those with SLRP have student loans in excess of \$50,000, with multiple soldiers having loans in excess of \$90,000. The median loan debt balance is currently at \$52,172.11. With 88 percent of ARNG soldiers possessing loans in excess of \$32,000, increasing the percentage by which the ARNG may repay a student loan will enhance flexibility in offering this as an incentive in today’s challenging recruiting environment.

**Resource Information:**

The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2025 President’s Budget that are impacted by this proposal. This proposal does not require additional funding until FY28 when the new legislation is fully integrated into the resource profile. See incremental increase in FY28-29 and stabilizing in FY30 and beyond.

<b>RESOURCE IMPACT (\$MILLIONS)</b>									
<b>Program</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>	<b>FY 2028</b>	<b>FY 2029</b>	<b>Appropriation</b>	<b>Budget Activity</b>	<b>BLI/SAG</b>	<b>Program Element (for all RDT&amp;E programs)</b>
SLRP	\$24	\$24	\$24	\$27	\$30	NGPA	1R	1R33A2	

USAR	\$5	\$5	\$5	\$5	\$5	RPA	IR	IR3	
USAF Reserve	\$0.62	\$0.62	\$0.62	\$0.62	\$0.62	3700/Reserve Personnel	01	73915	
ANG does not intend to use this authority									
USN Reserve does not intend to use this authority									

**Changes to Existing Law:** This proposal would amend section 16301 of title 10, United States Code, as follows:

**10 U.S. Code § 16301. Education loan repayment program: members of Selected Reserve**

- (a)(1) Subject to the provisions of this section, the Secretary of Defense may repay—
- (A) any loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.);
  - (B) any loan made under part D of such title (the William D. Ford Federal Direct Loan Program, 20 U.S.C. 1087a et seq.);
  - (C) any loan made under part E of such title (20 U.S.C. 1087aa et seq.); or
  - (D) any loan incurred for educational purposes made by a lender that is—
    - (i) an agency or instrumentality of a State;
    - (ii) a financial or credit institution (including an insurance company) that is subject to examination and supervision by an agency of the United States or any State;
    - (iii) a pension fund approved by the Secretary for purposes of this section; or
    - (iv) a nonprofit private entity designated by a State, regulated by that State, and approved by the Secretary for purposes of this section.

Repayment of any such loan shall be made on the basis of each complete year of service performed by the borrower.

(2) The Secretary of Defense may repay loans described in paragraph (1) in the case of any person for service performed as a member of the Selected Reserve of the Ready Reserve of an armed force in a reserve component and in an officer program or military specialty specified by the Secretary of Defense. The Secretary may repay such a loan only if the person to whom the loan was made performed such service after the loan was made.

(b) The portion or amount of a loan that may be repaid under subsection (a) is ~~15~~ 20 percent or \$1,000, whichever is greater, for each year of service, plus the amount of any interest that may accrue during the current year.

(c) If a portion of a loan is repaid under this section for any year, interest on the remainder of the loan shall accrue and be paid in the same manner as is otherwise required. For the purposes of this section, any interest that has accrued on the loan for periods before the current year shall be considered as within the total loan amount that shall be repaid.

(d) Nothing in this section shall be construed to authorize refunding any repayment of a loan.

(e) A person who transfers from service making the person eligible for repayment of loans under this section (as described in subsection (a)(2)) to service making the person eligible for repayment of loans under section 2171 of this title (as described in subsection (a)(2) of that section) during a year shall be eligible to have repaid a portion of such loan determined by giving appropriate fractional credit for each portion of the year so served, in accordance with regulations of the Secretary concerned.

(f) The Secretary of Defense shall, by regulation, prescribe a schedule for the allocation of funds made available to carry out the provisions of this section and section 2171 of this title during any year for which funds are not sufficient to pay the sum of the amounts eligible for repayment under subsection (a) and section 2171(a) of this title.

(g) The Secretary of Homeland Security may repay loans described in subsection (a)(1) and otherwise administer this section in the case of members of the Selected Reserve of the Coast Guard Reserve when the Coast Guard is not operating as a service in the Navy.

(h) Except a person described in subsection (e) who transfers to service making the person eligible for repayment of loans under section 2171 of this title, a member of the armed forces who fails to complete the period of service required to qualify for loan repayment under this section shall be subject to the repayment provisions of section 303a(e) or 373 of title 37.

(i) The Secretary of Defense may prescribe, by regulations, procedures for implementing this section, including standards for qualified loans and authorized payees and other terms and conditions for making loan repayments. Such regulations may include exceptions that would allow for the payment as a lump sum of any loan repayment due to a member under a written agreement that existed at the time of a member's death or disability.



1 **SEC. \_\_\_\_ . MODIFICATION TO ALLOW COST-PLUS CONTRACTING FOR**  
2 **USINDOPACOM POSTURE PRIORITY PROJECTS**

3 Section 3323 of title 10, United States Code, is amended by adding at the end the  
4 following new subsection:

5 “(c) EXCEPTION FOR CERTAIN PRIORITY POSTURE PROJECTS OF UNITED STATES INDO-  
6 PACIFIC COMMAND.—

7 “(1) IN GENERAL.—Notwithstanding subsection (a), the Secretary of Defense or  
8 the Secretary of a military department is authorized to approve cost-plus contracts that  
9 the Secretary concerned determines are necessary to ensure expeditious completion of a  
10 military construction project or projects or portion thereof, in Guam, the Commonwealth  
11 of the Northern Mariana Islands, Wake Island, Midway Island, the Compact of Free  
12 Association countries, and other foreign countries, that support priority posture projects  
13 of the United States Indo-Pacific Command, if the following conditions are met:

14 “(A) The project has previously been reported to Congress as  
15 infrastructure or military construction needed to support the priority posture  
16 projects.

17 “(B) The Secretary concerned determines, in the Secretary’s sole  
18 discretion, that fixed-price contracting is likely to result in limited competition,  
19 unreasonable price premiums, or delays in execution.

20 “(2) NOTIFICATION TO CONGRESS.—The authority in this subsection may be  
21 exercised only after the Secretary concerned notifies the appropriate committees of  
22 Congress of the determination under paragraph (1)(B), the reasons for the determination,  
23 and the estimated cost of the project or portion thereof to be carried out using cost-plus

1 contracting. The project may then be carried out only after the end of the 14-day period  
2 beginning on the date the notification is received by the committees in an electronic  
3 medium pursuant to section 480 of this title.

4 “(3) MILITARY CONSTRUCTION PROJECT DEFINED.—In this subsection, the term  
5 ‘military construction project’ includes military construction funded by a foreign  
6 government but executed by the United States.

7 “(4) EXPIRATION OF AUTHORITY.—The authority provided by this subsection  
8 expires on December 31, 2028.”.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]**

### **Section-by-Section Analysis**

This proposal would add a new subsection to section 3323 of title 10, United States Code, to authorize cost-plus contracting on a temporary basis through December 31, 2028, for priority posture projects subject to certain limitations and requirements. USINDOPACOM priority posture projects are a set of prioritized defense investments and activities established by Congress to enhance U.S. deterrence and defense, assure allies and partners, and counter adversary threats in the Indo-Pacific region in response to China’s growing military power.

This proposal would add a new subsection to such section 3323 providing temporary authority through December 31, 2028, to enable the Secretary of Defense to approve cost-plus contracting for a military construction project, or projects, in Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, Midway Island, the Compact of Free Association countries and other foreign countries that support priority posture projects. This authority would apply only if the project has previously been reported to Congress as infrastructure or military construction needed to support priority posture projects and if the Secretary determines that fixed price contracting is likely to result in limited competition, unreasonable price premiums, or delays in execution. For purposes of the new paragraph, the term “military construction project” would include military construction funded by a foreign government but executed by the United States. This is necessary because some priority posture-related construction projects are expected to be funded in whole or in part by foreign governments.

Cost-plus authority is needed to ensure that the rebalance to the Indo-Pacific can occur in an expeditious manner and that the Secretary of Defense has needed flexibility to award contracts and allocate resources in an efficient manner by attracting qualified contractors and adapting to changing circumstances. Current law provides no general national defense waiver process; to the contrary, current language prohibits cost-plus contracting even when there is a declaration of war

or declaration of a national emergency. The ability to award cost-plus contracting is needed in order to fulfill the U.S. national security policy requirements to provide mutual defense, deter aggression, and dissuade coercion in the theater operation areas in response to the evolving security environment in the Indo-Pacific Region and in order for the United States to effectively engage in long-term strategic competition and maintain the power and influence of the United States against China's growing military power in the region. Because of long logistics chains, labor availability, and weather conditions prevalent in the theater operation areas, as well as limited experience with successful construction projects in the region, and because of tight construction deadlines, competition for many priority posture projects is expected to be limited, and significant price premiums are likely due to the high risk incurred by the contractor on a firm fixed-price contract. Further, it is anticipated that some of these projects may need a mix of military labor and contracted work in order to avoid delays in execution; this could result in contractor windfalls under a fixed price contract. Cost-plus contracting for these high risk priority posture projects or portions of these projects may be more economical and expedient than traditional firm fixed-price contracting.

**Budget Implications:** This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2025 President's Budget.

**Changes to Existing Law:** This proposal would amend section 3323 of title 10, United States Code, as follows:

**§ 3323. Cost-plus contracting prohibited for military construction and military family housing projects**

(a) PROHIBITION.—A contract entered into by the United States in connection with a military construction project or a military family housing project may not use any form of cost-plus contracting.

(b) APPLICABILITY. —The prohibition specified in subsection (a) —

(1) is in addition to the prohibition specified in section 3322(a) of this title on the use of the cost-plus-a-percentage-of-cost system of contracting; and

(2) applies notwithstanding a declaration of war or the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621) that includes the use of the armed forces.

(c) EXCEPTION FOR CERTAIN PRIORITY POSTURE PROJECTS OF UNITED STATES INDO-PACIFIC COMMAND.—

(1) IN GENERAL.—Notwithstanding subsection (a), the Secretary of Defense or the Secretary of a military department is authorized to approve cost-plus contracts that the Secretary concerned determines are necessary to ensure expeditious completion of a military construction project or projects or portion thereof, in Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, Midway Island, the Compact of Free Association countries, and other foreign countries, that support priority posture projects of the United States Indo-Pacific Command, if the following conditions are met:

(A) The project has previously been reported to Congress as infrastructure or military construction needed to support the priority posture projects.

(B) The Secretary concerned determines, in the Secretary's sole discretion, that fixed-price contracting is likely to result in limited competition, unreasonable price premiums, or delays in execution.

(2) NOTIFICATION TO CONGRESS.—The authority in this subsection may be exercised only after the Secretary concerned notifies the appropriate committees of Congress of the determination under paragraph (1)(B), the reasons for the determination, and the estimated cost of the project or portion thereof to be carried out using cost-plus contracting. The project may then be carried out only after the end of the 14-day period beginning on the date the notification is received by the committees in an electronic medium pursuant to section 480 of this title.

(3) MILITARY CONSTRUCTION PROJECT DEFINED.—In this subsection, the term 'military construction project' includes military construction funded by a foreign government but executed by the United States.

(4) EXPIRATION OF AUTHORITY.—The authority provided by this subsection expires on December 31, 2028.

1 **SEC. \_\_\_\_ . PAYMENT OF EXPENSES TO HELP RESPOND TO CIVILIAN HARM.**

2 (a) IN GENERAL.—Chapter 163 of title 10, United States Code, is amended by adding at  
3 the end the following new section:

4 **“§ 2741. Payment of expenses to help respond to civilian harm**

5 “(a) PAYMENTS.—(1) The Secretary of Defense may carry out short-term projects and  
6 make payments for expenses, in such amounts and through such means and consistent with the  
7 regional assessments developed in accordance with subsection (c)(2), that the Secretary  
8 determines to be necessary for the purpose of expressing condolences or helping alleviate or  
9 otherwise responding to civilian harm that has occurred in an area affected by an operation of the  
10 armed forces, a coalition that includes the United States, or a military operation supporting the  
11 United States or such a coalition.

12 “(2) A determination by the Secretary under this subsection shall be binding on all  
13 accounting officers of the United States.

14 “(b) CONDITIONS.—The Secretary may only make a payment under subsection (a) if—

15 “(1) the payment is not authorized under any other provision of law;

16 “(2) the payment is not with respect to harm to a civilian who was involved in  
17 planning or executing an attack or other hostile action that gave rise to the use of force by  
18 the United States, a coalition that includes the United States, or an armed organization  
19 supporting the United States or such coalition, that resulted in such civilian harm; and

20 “(3) the recipient of the payment or any civilian on whose behalf the payment is  
21 made is not otherwise ineligible for payment under any other provision of law.

1           “(c) AMOUNT OF PAYMENT.—(1) The Secretary of Defense shall determine the amount of  
2 each payment of expenses under this section based on a regional assessment developed under  
3 this subsection.

4           “(2) The Secretary of Defense shall develop regional assessments on at least an annual  
5 basis, including anticipated total costs of payments under this section for the region, with the  
6 concurrence of the Secretary of State.

7           “(d) NO ADMISSION.—A payment under subsection (a) shall not be construed or  
8 considered as an admission or acknowledgement of any violation of the law of war or any legal  
9 obligation to provide compensation for any harm to civilians.

10           “(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out  
11 this section and shall transmit a copy of such regulations to the congressional defense  
12 committees.

13           “(f) FUNDING.—(1) The Secretary may use not more than \$10,000,000 in any fiscal year  
14 for payments under this section.

15           “(2) Amounts used to make payments in a fiscal year under this section shall be derived  
16 from amounts authorized to be made available for that fiscal year for Operation and  
17 Maintenance, Defense-wide.”.

18           (b) CLARIFICATION OF LIMITATION ON EX GRATIA PAYMENTS.—Section 1213(i) of the  
19 National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; 10 U.S.C. 2731  
20 note) is repealed.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how  
the legislative text would amend existing law.]**

### **Section-by-Section Analysis**

This proposal would create a new authority for paying expenses to help respond to civilian harm. Section 1213 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 authorizes funds to be made available for *ex gratia* payments for damage, personal injury, or death that is incident to the use of force by the United States Armed Forces, a coalition that includes the United States, a military organization supporting the United States, or a military organization supporting the United States or such coalition. This new authority would complement this existing authority and allow for other expenses to help alleviate or otherwise respond to harm to civilians, for example, including expense for medical care, repairs to damaged structures and infrastructure, ordnance removal, and locally held commemorative events or symbols. This new authority would allow the Department to pay expenses, whether the expenses were incurred by the Department of Defense or others and regardless of whether the expenses are paid directly by the Department of Defense or are reimbursed to a payer who has already paid the expense.

The \$10,000,000 limitation on the total amount of funds per fiscal year provided under this new authority will ensure the appropriate use of this authority, while also taking into account that expenses associated with medical care and equipment, repairs to structure and infrastructure, and other allowable uses of this authority may be expected to exceed payment amounts historically associated with condolence payments.

In a memorandum dated January 27, 2022, *Improving Civilian Harm Mitigation and Response*, the Secretary of Defense emphasized that the protection of civilians is a strategic and a moral imperative; stated that DoD will revisit the ways in which we acknowledge the harm to civilians that results from our operations; directed the creation of a Civilian Harm Mitigation and Response Action Plan (CHMR-AP); and specified that the CHMR-AP provide for the review of guidance and its associated implementation of how the Department responds to civilian harm, including, but not limited to condolence payments and the public acknowledgement of harm. This proposal aims to implement a major potential improvement identified during that review — specifically, to enact a broader new authority for payment of expenses to help respond to incidents of civilian harm that would supplement the section 1213 *ex gratia* authority.

Objective 8 of the CHMR-AP aims to establish a comprehensive framework through which DoD will ensure the availability of a diverse menu of options that can be used to respond to individuals and communities affected by military operations—including public and private acknowledgements of harm, condolence payments, medical care, repairs to damaged structures and infrastructure, ordnance removal, and locally held commemorative events or symbols. These options will allow commanders to craft tailored responses which are contextually and culturally appropriate. It is anticipated that military commanders would exercise this authority within their areas of responsibility pursuant to guidance from the Secretary and that the Secretary would not personally approve each payment.

Consistent with the emphasis in the National Defense Strategy and the National Security Strategy on the strategic importance of upholding our values, responding appropriately when civilian harm occurs will demonstrate that the United States leads with its values and stands ready to uphold those values, especially when it employs force in defense of its national interests. Moreover, enhancing DoD's ability to more effectively respond to instances of civilian harm will ensure U.S. military operations are perceived as legitimate, enhance the view of the United States as a responsible actor during the conduct of hostilities, and limit the ability of adversaries to exploit incidents of civilian harm to gain an advantage in the information domain.

Likewise, effective responses to civilian harm can mitigate against potential disinformation campaigns and other gray-zone tactics used by adversaries that pose risks to U.S. legitimacy.

The proposal would also remove the exclusive restriction from subsection (i) of section 1213. Subsection (i) states that section 1213 is to be the sole authority to provide ex gratia payments to persons for property damage, personal injury, or death incident the use of force by the United States Armed Forces. The amendment would allow the new authority to complement existing ex gratia authority, and clarify that, for example, an ex-gratia payment for condolence need not preclude related efforts such as provision of medical care or rebuilding

**Resource Information:** The resources affected by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2025 President’s Budget request.

RESOURCE IMPACT (\$MILLIONS)									
	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Total	10.0	10.0	10.0	10.0	10.0	Operation and Maintenance, Defense-Wide (0100D)	04	4GTN	0907388D8Z

**Changes to Existing Law:** This proposal would create add a new section 2741 to chapter 163 of title 10, United States Code, the full text of which is shown in the legislative language above. This proposal would also amend section 1213 of the NDAA for FY 2020 (10 U.S.C. 2731 note) as follows:

**SEC. 1213. AUTHORITY FOR CERTAIN PAYMENTS TO REDRESS INJURY AND LOSS.**

(a) AUTHORITY.—During the period beginning on the date of the enactment of this Act and ending on December 31, 2033, not more than \$3,000,000 for each calendar year, to be derived from funds authorized to be appropriated to the Office of the Secretary of Defense under the Operation and Maintenance, Defense-wide account, may be made available for ex gratia payments for damage, personal injury, or death that is incident to the use of force by the United States Armed Forces, a coalition that includes the United States, a military organization supporting the United States, or a military organization supporting the United States or such coalition.

\* \* \* \* \*

~~(i) RELATION TO OTHER AUTHORITIES. Notwithstanding any other provision of law, the authority provided by this section shall be construed as the sole authority available to make ex gratia payments for property damage, personal injury, or death that is incident to the use of force by the United States Armed Forces.~~



1 **SEC. \_\_\_\_. PILOT PROGRAM FOR ADDITIONAL SUBSEQUENT PHASE II AWARDS**  
2 **FOR SMALL BUSINESS CONCERNS.**

3 Section 9(ff) of the Small Business Act (15 U.S.C. 638(ff)) is amended by adding at the  
4 end the following new paragraph:

5 “(3) DEPARTMENT OF DEFENSE PILOT AUTHORITY FOR AWARDING AN  
6 ADDITIONAL SEQUENTIAL PHASE II AWARD.—

7 “(A) During fiscal years 2024 through 2027, the Secretary of Defense may  
8 award one additional Phase II SBIR award or one additional Phase II STTR award  
9 to a small business concern that received a Phase II award under paragraph (1) for  
10 continued work on that project.

11 “(B) The Secretary of Defense may use not more than 3 percent of the  
12 funds allocated to the SBIR and STTR programs in carrying out this paragraph  
13 and shall submit an application to the Administrator for approval prior to any  
14 award under subparagraph (A). The application shall include an explanation for  
15 why the requirement could not be funded as a Phase III award and a description of  
16 how the Department of Defense will minimize, to the maximum extent possible,  
17 the number of awards under this paragraph.”.

**Section-by-Section Analysis**

This proposal would clarify and expand the current authority for subsequent Phase II awards that Federal agencies may award to small business concerns (SBCs). The current authority in the Small Business Act (15 U.S.C. 638(j)(1)) limits an SBC to one additional “sequential” award. This language limits agencies in the number of total Phase II awards allowed as not-to-exceed two Phase II awards in total to the same SBC for the same topic. This has proven to limit the utility of section (9)(ff) of the Small Business Act (15 U.S.C. 638(ff)), as the original sponsoring agency of the Phase I award is usually the awardee of the original (first) Phase II award and has declined requests from other agencies to make a subsequent Phase II award in order to further develop the technology for the agency’s own transition efforts.

Expanding this authority to allow for an additional, subsequent Phase II award regardless of the number of Phase II awards made by the original Phase I agency, but not to exceed three awards in total, to the same SBC for the same topic, would afford the Federal Agencies greater flexibility in awarding a subsequent Phase II award within the Federal agencies in order to further mature SBIR and STTR technology to a transition readiness level that would enable insertion into a program of record and/or fielded system.

**Resource Information:** This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2025 President's Budget.

**Changes to Existing Law:** This proposal would amend section 9(ff) of the Small Business Act (15 U.S.C. 638(ff)) as follows:

(ff) Additional SBIR and STTR awards

(1) Express authority for awarding a sequential Phase II award

A small business concern that receives a Phase II SBIR award or a Phase II STTR award for a project remains eligible to receive 1 additional Phase II SBIR award or Phase II STTR award for continued work on that project.

(2) Preventing duplicative awards

The head of a Federal agency shall verify that any activity to be performed with respect to a project with a Phase I or Phase II SBIR or STTR award has not been funded under the SBIR program or STTR program of another Federal agency.

(3) Department of defense pilot authority for awarding an additional sequential Phase II award

(A) During fiscal years 2024 through 2027, the Secretary of Defense may award one additional Phase II SBIR award or one additional Phase II STTR award to a small business concern that received a Phase II award under paragraph (1) for continued work on that project.

(B) The Secretary of Defense may use not more than 3 percent of the funds allocated to the SBIR and STTR programs in carrying out this paragraph and shall submit an application to the Administrator for approval prior to any award under subparagraph (A). The application shall include an explanation for why the requirement could not be funded as a Phase III award and a description of how the Department of Defense will minimize, to the maximum extent possible, the number of awards under this paragraph.

1 **SEC. \_\_\_\_ . PILOT PROGRAM TO AUTHORIZE CERTAIN SBIR AND STTR AWARDS**  
2 **FOR TECHNOLOGIES THAT ALIGN WITH DEPARTMENT OF**  
3 **DEFENSE MODERNIZATION PRIORITIES.**

4 (a) **AUTHORITY.**—The Secretary of Defense or the Secretary of a military department  
5 may make a Phase II award under the Small Business Innovation Research program or the Small  
6 Business Technology Transfer program that exceeds the limitation described in paragraph (1) of  
7 section 9(aa) of the Small Business Act (15 U.S.C. 638(aa)) without seeking a waiver from the  
8 Administrator of the Small Business Administration under paragraph (4) of such section, if the  
9 award meets the requirements of subsection (b).

10 (b) **AWARD REQUIREMENTS.**—An award meets the requirements of this subsection if—

11 (1) the award does not exceed \$5,000,000; and

12 (2) the Secretary of Defense determines that the award is being made for a  
13 technology that aligns with modernization priorities of the Department of Defense and  
14 has a high potential for transition to a program of record or fielded system.

15 (c) **LIMITATION.**—For awards under the pilot program authorized under subsection (a),  
16 the Secretary of Defense and the Secretary of each military department may allocate not more  
17 than 10 percent of the funds allocated in a fiscal year to the SBIR program and the STTR  
18 program for the Department of Defense or a military department, as the case may be.

19 (d) **RULE OF CONSTRUCTION.**—Nothing in this section affects the applicability of section  
20 9(aa)(4) of the Small Business Act (15 U.S.C. 638(aa)(4)) with respect to an award that exceeds  
21 \$5,000,000.

22 (e) **REPORTING.**—The Secretary of Defense shall include information on the awards made  
23 under this section in complying with annual reporting requirements relating to the SBIR and

1 STTR programs, including the requirements of paragraph (2) of section 9(aa) of the Small  
2 Business Act (15 U.S.C. 638(aa)).

3 (f) DEFINITIONS.—The definitions in section 9(e) of the Small Business Act (15 U.S.C.  
4 638(e)) shall apply to the terms used in this section.

5 (g) SUNSET.—The authority under this section shall terminate on September 30, 2026.

### Section-by-Section Analysis

This proposal would authorize a pilot program under which the Secretary of Defense and the Secretaries of the military departments may make Phase II awards under the Small Business Innovation Research (SBIR) program and the Small Business Technology Transfer (STTR) program in amounts that exceed the maximum award amount described in section 9(aa)(1) of the Small Business Act (15 U.S.C. 638(aa)(1)), without seeking a waiver from the Small Business Administration (SBA). The authority to make awards under the pilot program would be limited to awards that are not more than \$5,000,000 and that are for technologies that align with DoD modernization priorities and have a high potential for transition to programs of record or fielded systems. This pilot program would be limited to 10 percent of each of the SBIR program and STTR program budgets of the Department of Defense, including the military departments and the defense agencies.

Subsection (aa) of section 9 of the Small Business Act (15 U.S.C. 638(aa)) establishes a cap on amounts for SBIR and STTR awards, prohibiting such awards from exceeding award guidelines by more than 50 percent unless a waiver is issued by the SBA. The award cap is adjusted annually for inflation by the Administrator of the SBA in accordance with subsections (j)(2)(D) and (p)(2)(B)(ix) of such section. The current award cap, as of October 2023, is \$2,045,816 for a Phase II award (including modifications). This award cap is restrictive to the Department of Defense (DoD) as it limits the ability of the Department to make awards on a timely basis due to the need to obtain the SBA’s approval of a waiver prior to making an award that exceeds the award cap.

The creation of the pilot program would improve the Department’s time-to-award for continuing technological research and development, as well as reduce the risk of the “valley of death” between phases of awards. The increased \$5,000,000 award threshold would allow DoD SBIR/STTR’s innovative technologies to mature to higher transition readiness levels, through programs such as the Office of the Secretary of Defense Transitions SBIR/STTR Technology program, and transition faster to members of the Armed Forces. If approved, the Department will be required to include a list of all awards made as part of this pilot program, as well as information on these awards as instructed in paragraphs (2) of section 9(aa) of the Small Business Act (15 U.S.C. 638(aa)) in DoD’s annual report to the SBA Administrator.

**Resource Information:** This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2025 President’s Budget.

**Changes to Existing Law:** This proposal makes no changes to existing law.

1 **SEC. \_\_\_\_ . REVISION OF SECRETARY OF DEFENSE AUTHORITY TO ENGAGE IN**  
2 **COMMERCIAL ACTIVITIES AS SECURITY FOR INTELLIGENCE**  
3 **COLLECTION ACTIVITIES.**

4 (a) EXTENSION OF AUTHORITY.—Section 431(a) of title 10, United States Code, is  
5 amended by striking “December 31, 2024” and inserting “December 31, 2029”.

6 (b) INTERAGENCY COORDINATION AND SUPPORT.—Section 431(b)(1) of such title is  
7 amended to read as follows:

8 “(1) be pre-coordinated with the Director of the Central Intelligence Agency  
9 using procedures mutually agreed upon by the Secretary of Defense and the Director,  
10 and, where appropriate, be supported by the Director; and”.

11 (c) PERIOD FOR REQUIRED AUDITS.—Section 432(b)(2) of such title is amended—

12 (1) in the first sentence, by striking “annually” and inserting “biennially”; and

13 (2) in the second sentence—

14 (A) by striking “all such audits” and inserting “each such audit”; and

15 (B) by striking “of each year” and inserting “of the year in which such  
16 audit is conducted”.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how  
the legislative text would amend existing law.]**

### **Section-by-Section Analysis**

This proposal would amend section 431 of title 10, United States Code, to extend to December 31, 2029, the authority for the Secretary of Defense to authorize the conduct of those commercial activities necessary to provide security for authorized intelligence collection activities abroad undertaken by the Department of Defense (DoD). The proposal would also clarify the coordination that will be conducted between the Central Intelligence Agency (CIA) and DoD prior to the conduct of the commercial activities, and revise the annual audit requirement to a biennial audit requirement.

Since first enacting authority for the Secretary to approve the use of commercial activities as security for intelligence collection activities abroad in 1991, Congress has extended this

authority eight times, in increments of 1, 2, 3, 4, or 5 years. This is now a mature program that should be extended for a period of 5 years. Regular reports to Congress enable effective congressional oversight, making periodic reauthorization unnecessary.

The Department has been required to conduct annual audits of the use of the authority since it was initially enacted in 1991, which are expensive and burdensome. No audit has found any unlawful or improper use or disposition of funds generated by any commercial activity authorized by section 431. Changing the requirement to biennial audits would provide sufficient frequency of audits to ensure the continued lawful and proper use and disposition of such funds without being overly burdensome.

Additional classified background information regarding the Department's conduct of its commercial cover program is available upon request.

**Resource Information:** The best estimate of resources requested within the Fiscal Year (FY) 2025 President's Budget that are impacted by this proposal will be provided in a separate classified document.

**Changes to Existing Law:** This proposal would amend sections 431 and 432 of title 10, United States Code, as follows:

**§ 431. Authority to engage in commercial activities as security for intelligence collection activities**

(a) AUTHORITY.—The Secretary of Defense, subject to the provisions of this subchapter, may authorize the conduct of those commercial activities necessary to provide security for authorized intelligence collection activities abroad undertaken by the Department of Defense. No commercial activity may be initiated pursuant to this subchapter after ~~December 31, 2024~~ December 31, 2029.

(b) INTERAGENCY COORDINATION AND SUPPORT.—Any such activity shall—  
~~(1) be coordinated with, and (where appropriate) be supported by, the Director of the Central Intelligence Agency; and~~

(1) be pre-coordinated with the Director of the Central Intelligence Agency using procedures mutually agreed upon by the Secretary of Defense and the Director, and, where appropriate, be supported by the Director; and

(2) to the extent the activity takes place within the United States, be coordinated with, and (where appropriate) be supported by, the Director of the Federal Bureau of Investigation.

(c) DEFINITIONS.—In this subchapter:

(1) The term “commercial activities” means activities that are conducted in a manner consistent with prevailing commercial practices and includes-

(A) the acquisition, use, sale, storage and disposal of goods and services;

(B) entering into employment contracts and leases and other agreements for real and personal property;

(C) depositing funds into and withdrawing funds from domestic and foreign commercial business or financial institutions;

(D) acquiring licenses, registrations, permits, and insurance; and

(E) establishing corporations, partnerships, and other legal entities.

(2) The term “intelligence collection activities” means the collection of foreign intelligence and counterintelligence information.

### **§ 432. Use, disposition, and auditing of funds**

(a) USE OF FUNDS.—Funds generated by a commercial activity authorized pursuant to this subchapter may be used to offset necessary and reasonable expenses arising from that activity. Use of such funds for that purpose shall be kept to the minimum necessary to conduct the activity concerned in a secure manner. Any funds generated by the activity in excess of those required for that purpose shall be deposited, as often as may be practicable, into the Treasury as miscellaneous receipts.

(b) AUDITS.—(1) The Secretary of Defense shall assign an organization within the Department of Defense to have auditing responsibility with respect to activities authorized under this subchapter.

(2) That organization shall audit the use and disposition of funds generated by any commercial activity authorized under this subchapter not less often than ~~annually~~ biennially. The results of ~~all such audits~~ each such audit shall be reported to the congressional defense committees and the congressional intelligence committees (as defined in section 437(c) of this title) by not later than December 31 ~~of each year~~ of the year in which such audit is conducted.



1 **SEC. \_\_. SECTOR RISK MANAGEMENT AGENCY STAKEHOLDER OUTREACH**  
2 **AND ENGAGEMENT.**

3 Section 2218 of the Homeland Security Act of 2002 (Public Law 107-296; 6 U.S.C.  
4 665d) is amended by adding at the end the following new subsection:

5 “(d) MISSION PROMOTION.—Each Sector Risk Management Agency may purchase  
6 promotional and recognition items and marketing and advertising services to publicize and  
7 promote the mission and services of the Agency that relate to carrying out the responsibilities of  
8 the Agency with respect to its designated critical infrastructure sector or subsector of such  
9 sector.”.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how  
the legislative text would amend existing law.]**

**Section-by-Section Analysis**

This proposal would expand the responsibilities for Sector Risk Management Agencies (SRMA) provided in section 2218 of the Homeland Security Act of 2002 (Public Law 107-296; 6 U.S.C. 665d) by authorizing SRMAs to purchase promotional and recognition items and marketing and advertising services to publicize and promote the mission and services of the SRMAs. Expansion of the SRMA authority would provide greater flexibility to proactively engage with the SRMAs’ designated critical infrastructure sectors or subsectors to fulfill their responsibilities to support sector risk management. Cybersecurity for the nation’s critical infrastructure is a high priority for the Administration and is a key pillar in the National Cybersecurity Strategy, and the ability to conduct increased proactive outreach to enable SRMAs to reach members of their critical infrastructure sectors or subsectors is critical to ensuring the protection of these key resources.

Many, if not most, of the critical infrastructure sectors and subsectors are broad and encompass thousands of private entities across the nation. As an example, the defense industrial base (DIB) is made up of hundreds of thousands of companies across the globe. Without the affirmative statutory authority to carry out cybersecurity, infrastructure security, and emergency communications stakeholder outreach and engagement that includes the purchase of promotional items and recognition items and marketing and advertising services to help ensure those companies are aware of the resources available to them, SRMAs find it difficult to conduct effective outreach to all of the private entities across their sectors or subsectors about the threats to and vulnerabilities of their systems and assets. Although SRMAs can conduct some of these activities today, spending funds on outreach and engagement often requires extensive legal analysis that introduces latencies. This authority would reduce that churn and ensure, for example, that the Department of Defense (DoD) can engage effectively with the DIB.

This authority would enable SRMAs to provide greater awareness of and mitigation for the threats, vulnerabilities, and risks to the critical infrastructure sector, as well as to provide greater awareness of the assistance that is available to their designated sectors to support their security programs, by permitting the expenditure of funds for outreach purposes. The DoD is the SRMA for the DIB, and has delegated key responsibilities to the National Security Agency. Reaching the thousands of companies that make up this critical infrastructure sector requires expanded authority to purchase promotional and recognition items and marketing and advertising services to increase awareness about the programs and services offered. Obtaining this authority is critical to the Department to fulfill its duties as SRMA to support sector risk management.

**Resource Information:** The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2025 President’s Budget that are impacted by this proposal. The resources requested would be applied to advertising to the DIB, tabling at supplier forums and expos, promotional materials, and shipping booth and promotional materials to various defense-industry focused conferences.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
DIB Stakeholder Outreach and Engagement	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	Operation and Maintenance, Defense-Wide	04	4GTT	N/A
Total	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75				

**Changes to Existing Law:** This proposal would amend section 2218 of the Homeland Security Act of 2002 (6 U.S.C. 665d) as follows:

SEC. 2218. SECTOR RISK MANAGEMENT AGENCIES.

(a) IN GENERAL.—Consistent with applicable law, Presidential directives, Federal regulations, and strategic guidance from the Secretary, each Sector Risk Management Agency, in coordination with the Director, shall— (1) provide specialized sector-specific expertise to critical infrastructure owners and operators within its designated critical infrastructure sector or subsector of such sector; and (2) support programs and associated activities of such sector or subsector of such sector.

\* \* \* \* \*

(d) MISSION PROMOTION.—Each Sector Risk Management Agency may purchase promotional and recognition items and marketing and advertising services to publicize and promote the mission and services of the Agency that relate to carrying out the responsibilities of the Agency with respect to its designated critical infrastructure sector or subsector of such sector.

1 **SEC. \_\_\_\_ . STREAMLINING OF MILESTONE B REQUIREMENTS.**

2 Section 4252 of title 10, United States Code, is amended—

3 (1) in the section heading, by striking “**certification required before**” and  
4 inserting “**factors to be considered before**”;

5 (2) by striking subsections (d), (e), and (f);

6 (3) by redesignating subsections (a), (b), (c), and (g) as subsections (b), (d), (e),  
7 and (f), respectively;

8 (4) by inserting before subsection (b), as so redesignated, the following new  
9 subsection:

10 “(a) RESPONSIBILITIES.—Before granting Milestone B approval for a major defense  
11 acquisition program or major subprogram, the milestone decision authority for the program or  
12 subprogram shall ensure that—

13 “(1) information about the program or subprogram is sufficient to warrant entry of  
14 the program or subprogram into the engineering and manufacturing development phase;

15 “(2) appropriate trade-offs among cost, schedule, technical feasibility, and  
16 performance objectives have been made to ensure that the program or subprogram is  
17 affordable when considering the per unit cost and the total life-cycle cost, and the  
18 Secretary of the military department concerned and the Chief of the armed force  
19 concerned concur with these trade-offs; and

20 “(3) there are sound plans for progression of the program or subprogram to the  
21 production phase.”;

22 (5) by amending subsection (b), as redesignated by paragraph (3) of this  
23 subsection, to read as follows:

1           “(b) FACTORS TO BE CONSIDERED FOR MILESTONE B APPROVAL.—A major defense  
2 acquisition program or major subprogram may not receive Milestone B approval until the  
3 milestone decision authority confirms the following factors were considered in the decision to  
4 grant Milestone B approval:

5                   “(1) The program or subprogram has received a preliminary design review and a  
6 formal post-preliminary design review or an equivalent assessment was conducted.

7                   “(2) The technology in the program or subprogram has been demonstrated in a  
8 relevant environment.

9                   “(3) The program or subprogram is affordable when considering the ability of the  
10 Department of Defense to accomplish the program’s or subprogram’s mission using  
11 alternative systems.

12                   “(4) Reasonable cost and schedule estimates have been developed to execute, with  
13 the concurrence of the Director of Cost Assessment and Program Evaluation, the product  
14 development and production plan under the program or subprogram.

15                   “(5) The estimated procurement unit cost for the program or subprogram and the  
16 estimated date for initial operational capability for the baseline description for the  
17 program or subprogram (under section 4214 of this title) have been established.

18                   “(6) Funding is expected to be available to execute the product development and  
19 production plan for the program or subprogram, consistent with the estimates described  
20 in paragraph (4) for the program or subprogram.

21                   “(7) Appropriate market research has been conducted prior to technology  
22 development to reduce duplication of existing technology and products.

1           “(8) The Department of Defense has completed an analysis of alternatives with  
2           respect to the program or subprogram.

3           “(9) The Joint Requirements Oversight Council has accomplished its duties with  
4           respect to the program or subprogram pursuant to section 181(b) of this title, including an  
5           analysis of the operational requirements for the program or subprogram.

6           “(10) Life-cycle sustainment planning has identified and evaluated relevant  
7           sustainment costs throughout development, production, operation, sustainment, and  
8           disposal of the program or subprogram, and any alternatives, and such costs are  
9           reasonable and have been accurately estimated.

10           “(11) An estimate has been made of the requirements for core logistics  
11           capabilities and the associated sustaining workloads required to support such  
12           requirements.

13           “(12) The program or subprogram complies with all relevant policies, regulations,  
14           and directives of the Department of Defense.

15           “(13) Appropriate actions have been taken to negotiate and enter into a contract or  
16           contract options for the technical data required to support the program or subprogram.

17           “(14) The program or subprogram has an approved life cycle sustainment plan  
18           required under section 4324(b) of this title.

19           “(15) In the case of a naval vessel program or subprogram, such program or  
20           subprogram is in compliance with the requirements of section 8669b of this title.”;

21           (6) by inserting after subsection (b), as redesignated by paragraph (3), the  
22           following new subsection:

1           “(c) WRITTEN RECORD OF MILESTONE DECISION.—The milestone decision authority shall  
2 issue a written record of decision at the time that Milestone B approval is granted. The record  
3 shall confirm compliance with subsection (b) and specifically state that the milestone decision  
4 authority considered the factors described in subsection (b) prior to the decision to grant  
5 milestone approval. The milestone decision authority shall retain records of the basis for the  
6 milestone decision.”;

7           (7) in subsection (d), as redesignated by paragraph (3) of this subsection—

8                   (A) in the subsection heading, by striking “CERTIFICATIONS OR  
9 DETERMINATION” and inserting “BASIS FOR MILESTONE APPROVAL”;

10                  (B) in paragraph (1)—

11                          (i) in the matter preceding subparagraph (A), by striking  
12 “certifications or a determination under subsection (a)” and inserting “a  
13 written record of the milestone decision under subsection (c)”;

14                          (ii) in subparagraph (A)—

15                                  (I) by striking “certifications or determination of the  
16 milestone decision authority” and inserting “decision of the  
17 milestone decision authority”; and

18                                  (II) by striking “certifications or determination specified in  
19 paragraph (1), (2), or (3) of subsection (a)” and inserting “decision  
20 specified in subsection (b)”;

21                          (iii) in subparagraph (B), by striking “certifications or  
22 determination” and inserting “decision”; and

23                  (C) in paragraph (2)—

1 (i) by striking “withdraw the certifications or determination  
2 concerned or”; and

3 (ii) by striking “certifications, determinations, or approval are” and  
4 inserting “approval is”;

5 (8) by amending subsection (e), as redesignated by paragraph (3), to read as  
6 follows:

7 “(e) SUBMISSIONS TO CONGRESS ON MILESTONE B.—

8 “(1) NOTIFICATION.—Not later than 15 days after granting Milestone B approval  
9 for a major defense acquisition program or major subprogram, the milestone decision  
10 authority for the program or subprogram shall provide to the congressional defense  
11 committees and, in the case of intelligence or intelligence-related activities, the  
12 congressional intelligence committees a written record of the milestone decision.

13 “(2) ADDITIONAL INFORMATION.—(A) At the request of any of the congressional  
14 defense committees or, in the case of intelligence or intelligence-related activities, the  
15 congressional intelligence committees, the milestone decision authority shall submit to  
16 the committee an explanation of the basis for the decision to grant Milestone B approval  
17 with respect to a major defense acquisition program or major subprogram, or further  
18 information or underlying documentation.

19 “(B) The explanation or additional information shall be submitted in unclassified  
20 form, but may include a classified annex.”; and

21 (9) in subsection (f), as redesignated by paragraph (3)—

22 (A) by striking paragraphs (4) and (5);

23 (B) by redesignating paragraph (6) as paragraph (4); and

1 (C) by adding at the end the following new paragraph:  
2 “(5) The term ‘written record of milestone decision’, with respect to a major  
3 defense acquisition program or a major subprogram, means a document signed by the  
4 milestone decision authority that formalizes approved entry of the program or  
5 subprogram into the next phase of the acquisition process.”.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]**

### **Section-by-Section Analysis**

This proposal modifies section 4252 of title 10, United States Code (U.S.C.), to streamline the Milestone B approval process for major defense acquisition programs. Milestone B is the decision under the major capability acquisition pathway for an acquisition program to enter the engineering and manufacturing development phase. The desired effect of this proposal is to 1) support tailoring of the acquisition process (thereby focusing decisions on key issues and risks in each program); and 2) reduce redundant and unnecessary documentation burdens on the Program Manager responsible for demonstrating that the program is eligible for approval by Department of Defense (DoD) officials.<sup>1</sup>

Beginning with the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016, Congress legislated significant acquisition reforms. These reforms included the creation of the Middle Tier of Acquisition Pathway and the subsequent establishment of the Software Acquisition Pathway in the NDAA for FY 2020.<sup>2</sup> In line with these statutory reforms, the DoD established the Adaptive Acquisition Framework, consisting of six unique pathways. The creation of these new pathways recognized that acquisition programs are unique, and that reviews, processes, and information requirements should be customized to accommodate the characteristics of a program. The new framework encourages tailoring of acquisition requirements to balance speed and oversight based on a program’s unique characteristics and risk. However, existing statutory requirements continue to perpetuate one-size-fits-all documentation requirements throughout the acquisition lifecycle. In particular, the written determination and extensive reporting required at milestone decisions creates a bureaucratic bottleneck and contributes to significant internal staffing requirements. A Government Accountability Office survey found, on average, that acquisition programs spend over two years completing 49 separate information requirements requiring an average of 5,600 staff days for their most recent milestone decision. Of these requirements, nearly half were identified as not

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<sup>1</sup> This proposal (in conjunction with a related proposal focused on Milestone A requirements) would streamline and simplify statutory requirements for acquisition milestones of major defense acquisition programs (MDAPs) in line with recent Congressional and Department of Defense (DoD) reform efforts to make acquisition processes timelier and more efficient.

<sup>2</sup> Sec. 800, National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, §800, 133 Stat. 1478 (2019).



highly valued by the acquisition programs completing them. This proposal revises the requirements under section 4252 of title 10, U.S.C., to streamline the documentation required to comply with the Milestone B decision.<sup>3</sup>

Specifically, this proposal seeks to make the following modifications to section 4252:

First, it assigns responsibility to the milestone decision authority to ensure identified conditions are met prior to issuing a Milestone B decision.<sup>4</sup>

Second, the proposal seeks to streamline the acquisition process by replacing the requirement to provide a written certification and determination of the milestone decision with a requirement for the milestone decision authority to confirm, as appropriate, that the program has satisfied certain conditions. It further allows the milestone decision authority to affirm compliance within the ‘written record of milestone decision,’ which may be existing program documentation (e.g., an Acquisition Decision Memorandum). Eliminating the requirement to develop a separate written certification and record of compliance will help to further reduce internal documentation requirements for a milestone decision and reduce staffing timelines.

Third, the proposal further streamlines the acquisition process by replacing the very specific considerations that must be factored by the milestone decision authority prior to the Milestone B decision with a broader set of required findings that generally describe critical risks affecting acquisition programs that Congress has identified for consideration prior to major program decisions. The proposed amendments do not eliminate any areas of emphasis or specific program risks that Congress has sought to address. Rather, the changes create flexibility for a broader discussion regarding the approaches taken to address the specific risks that Congress has identified.<sup>5</sup>

Fourth, the proposal streamlines the congressional reporting requirement by requiring the milestone decision authority to provide the written record of the milestone decision to the congressional defense committees in lieu of a separate brief summary report. Eliminating a separate congressional reporting requirement will save significant staffing time and use of program resources to comply with duplicative requirements. This proposal would also

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<sup>3</sup> U.S. Gov’t Government Accountability Off, GAO-15-192, Acquisition Reform: DOD Should Streamline Its Decision-Making Process for Weapon Systems to Reduce Inefficiencies, 6, (2015).

<sup>4</sup> This approach matches the statutory requirements currently used for Milestone A (section 4251 of title 10, U.S. Code), which impose general conditions for milestone approval.

<sup>5</sup> Specifically, the proposed amendments simplify requirements relating to use of a preliminary design review, demonstrating technology in a relevant environment, establishing procurement unit costs and a target date for initial operating capability, and life-cycle sustainment planning. They eliminate requirements for the milestone decision authority to make determinations regarding plans to account for de-certification of cryptographic systems and Modular Open Systems Architecture. The intent is not to completely eliminate these issues from consideration, as they are required by other sections of statute, but to eliminate the requirement that they be included as part of a Milestone B decision point. Changes to this section enable the milestone decision authority to account for the wide diversity of programs that the Army and DoD currently execute and are consistent with efforts to streamline the acquisition process. These reforms will enable the milestone decision authority to ensure sound principals are applied to the program while eliminating overly specific requirements.

require that an explanation of the decision be provided to Congressional committees upon request.

Finally, this proposal eliminates several requirements that are rendered unnecessary by the proposed changes, including non-delegation of certification requirements, waiving certification for national security reasons, and providing notification of such a waiver in budget documents.<sup>6</sup>

In conclusion, this proposal seeks to reduce the administrative burden associated with the Milestone B approval process while maintaining the critical information and documentation requirements necessary to ensure program accountability and success as well as keep Congress fully informed.

**Resource Information:** This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2025 President’s Budget request.

**Changes to Existing Law:** This proposal would amend section 4252 of title 10, United States Code as follows:

**§ 4252. Major defense acquisition programs: ~~certification required before~~ factors to be considered before Milestone B approval**

(a) RESPONSIBILITIES.—Before granting Milestone B approval for a major defense acquisition program or major subprogram, the milestone decision authority for the program or subprogram shall ensure that—

(1) information about the program or subprogram is sufficient to warrant entry of the program or subprogram into the engineering and manufacturing development phase;

(2) appropriate trade-offs among cost, schedule, technical feasibility, and performance objectives have been made to ensure that the program or subprogram is affordable when considering the per unit cost and the total life-cycle cost, and the Secretary of the military department concerned and the Chief of the armed force concerned concur with these trade-offs; and

(3) there are sound plans for progression of the program or subprogram to the production phase.

(ba) FACTORS TO BE CONSIDERED FOR MILESTONE B APPROVAL CERTIFICATIONS AND DETERMINATION REQUIRED.—A major defense acquisition program or major subprogram may not receive Milestone B approval until the milestone decision authority confirms the following factors were considered in the decision to grant Milestone B approval—:

(1) ~~The program or subprogram has received a preliminary design review and a formal post-preliminary design review or an equivalent assessment was conducted a formal post-preliminary design review assessment, and certifies on the basis of such~~

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<sup>6</sup> Replacing the requirement to provide a certification and determination of the milestone decision with a written record of the decision eliminates the need for a waiver of certification requirement and makes the prohibition on delegation unnecessary.

assessment that the program demonstrates a high likelihood of accomplishing its intended mission;

(2) further certifies that the ~~The~~ technology in the program or subprogram has been demonstrated in a relevant environment, as determined by the milestone decision authority on the basis of an independent review and technical risk assessment conducted under section 4272 of this title;

(3) determines in writing that

(A) the program is affordable when considering the ability of the Department of Defense to accomplish the program's mission using alternative systems;

(B) appropriate trade-offs among cost, schedule, technical feasibility, and performance objectives have been made to ensure that the program is affordable when considering the per unit cost and the total life-cycle cost;

(C) reasonable cost and schedule estimates have been developed to execute, with the concurrence of the Director of Cost Assessment and Program Evaluation, the product development and production plan under the program;

(D) the estimated procurement unit cost for the program and the estimated date for initial operational capability for the baseline description for the program (established under section 4214 of this title) do not exceed the program cost and fielding targets established under section 4271(a) of this title, or, if such estimated cost is higher than the program cost targets or if such estimated date is later than the fielding target, the program cost targets have been increased or the fielding target has been delayed by the milestone decision authority;

(E) funding is expected to be available to execute the product development and production plan for the program, consistent with the estimates described in subparagraph (C) for the program;

(F) appropriate market research has been conducted prior to technology development to reduce duplication of existing technology and products;

(G) the Department of Defense has completed an analysis of alternatives with respect to the program;

(H) the Joint Requirements Oversight Council has accomplished its duties with respect to the program pursuant to section 181(b) of this title, including an analysis of the operational requirements for the program;

(I) life-cycle sustainment planning, including corrosion prevention and mitigation planning, has identified and evaluated relevant sustainment costs throughout development, production, operation, sustainment, and disposal of the program, and any alternatives, and that such costs are reasonable and have been accurately estimated;

(J) an estimate has been made of the requirements for core logistics capabilities and the associated sustaining workloads required to support such requirements;

(K) there is a plan to mitigate and account for any costs in connection with any anticipated de-certification of cryptographic systems and components during the production and procurement of the major defense acquisition program to be acquired;

~~(L) the program complies with all relevant policies, regulations, and directives of the Department of Defense;~~

~~(M) the Secretary of the military department concerned and the Chief of the armed force concerned concur in the trade-offs made in accordance with subparagraph (B);~~

~~(N) the requirements of section 4402(e) of this title are met;~~

~~(O) appropriate actions have been taken to negotiate and enter into a contract or contract options for the technical data required to support the program; and~~

~~(P) has approved the life cycle sustainment plan required under section 4324(b) of this title.~~

~~(4) in the case of a space system, performs a cost-benefit analysis for any new or follow-on satellite system using a dedicated ground control system instead of a shared ground control system, except that no cost-benefit analysis is required to be performed under this paragraph for any Milestone B approval of a space system after December 31, 2019; and~~

(3) The program or subprogram is affordable when considering the ability of the Department of Defense to accomplish the program's or subprogram's mission using alternative systems.

(4) Reasonable cost and schedule estimates have been developed to execute, with the concurrence of the Director of Cost Assessment and Program Evaluation, the product development and production plan under the program or subprogram.

(5) The estimated procurement unit cost for the program or subprogram and the estimated date for initial operational capability for the baseline description for the program or subprogram (under section 4214 of this title) have been established.

(6) Funding is expected to be available to execute the product development and production plan for the program or subprogram, consistent with the estimates described in paragraph (4) for the program or subprogram.

(7) Appropriate market research has been conducted prior to technology development to reduce duplication of existing technology and products.

(8) The Department of Defense has completed an analysis of alternatives with respect to the program or subprogram.

(9) The Joint Requirements Oversight Council has accomplished its duties with respect to the program or subprogram pursuant to section 181(b) of this title, including an analysis of the operational requirements for the program or subprogram.

(10) Life-cycle sustainment planning has identified and evaluated relevant sustainment costs throughout development, production, operation, sustainment, and disposal of the program or subprogram, and any alternatives, and such costs are reasonable and have been accurately estimated.

(11) An estimate has been made of the requirements for core logistics capabilities and the associated sustaining workloads required to support such requirements.

(12) The program or subprogram complies with all relevant policies, regulations, and directives of the Department of Defense.

(13) Appropriate actions have been taken to negotiate and enter into a contract or contract options for the technical data required to support the program or subprogram.

(14) The program or subprogram has an approved life cycle sustainment plan required under section 4324(b) of this title.

(15) ~~in~~ In the case of a naval vessel program or subprogram, such program or subprogram is in ~~certifies~~ compliance with the requirements of section 8669b of this title.

(c) WRITTEN RECORD OF MILESTONE DECISION.—The milestone decision authority shall issue a written record of decision at the time that Milestone B approval is granted. The record shall confirm compliance with subsection (b) and specifically state that the milestone decision authority considered the factors described in subsection (b) prior to the decision to grant milestone approval. The milestone decision authority shall retain records of the basis for the milestone decision.

(db) CHANGES TO BASIS FOR MILESTONE APPROVAL CERTIFICATIONS OR DETERMINATION.—(1) The program manager for a major defense acquisition program that has received ~~certifications or a determination~~ a written record of the milestone decision under subsection (ca) shall immediately notify the milestone decision authority of any changes to the program or a designated major subprogram of such program that—

(A) alter the substantive basis for the ~~certifications or determination~~ decision of the milestone decision authority relating to any component of such ~~certifications or determination~~ decision specified in ~~paragraph (1), (2), or (3)~~ of subsection (ba); or

(B) otherwise cause the program or subprogram to deviate significantly from the material provided to the milestone decision authority in support of such ~~certifications or determination~~ decision.

(2) Upon receipt of information under paragraph (1), the milestone decision authority may ~~withdraw the certifications or determination concerned or~~ rescind Milestone B approval if the milestone decision authority determines that such ~~certifications, determination, or approval~~ is are no longer valid.

(ee) SUBMISSIONS TO CONGRESS ON MILESTONE B.—

(1) NOTIFICATION ~~BRIEF SUMMARY REPORT.~~-Not later than 15 days after granting Milestone B approval for a major defense acquisition program or major subprogram, the milestone decision authority for the program or subprogram shall provide to the congressional defense committees and, in the case of intelligence or intelligence-related activities, the congressional intelligence committees a written record of the milestone decision. ~~brief summary report that contains the following elements:~~

(A) The program cost and fielding targets established under section 4271(a) of this title.

(B) The estimated cost and schedule for the program established by the military department concerned, including—

(i) the dollar values estimated for the program acquisition unit cost, average procurement unit cost, and total life-cycle cost; and

(ii) the planned dates for each program milestone, initial operational test and evaluation, and initial operational capability.

(C) The independent estimated cost for the program established pursuant to section 3221(b)(6) of this title, and any independent estimated schedule for the program, including—

(i) the dollar values and ranges estimated for the program acquisition unit cost, average procurement unit cost, and total life-cycle cost; and

(ii) the planned dates for each program milestone, initial operational test and evaluation, and initial operational capability.

(D) A summary of the technical and manufacturing risks associated with the program, as determined by the military department concerned, including identification of any critical technologies or manufacturing processes that have not been successfully demonstrated in a relevant environment.

(E) A summary of the independent technical risk assessment conducted or approved under section 4272 of this title, including identification of any critical technologies or manufacturing processes that have not been successfully demonstrated in a relevant environment.

(F) A statement of whether a modular open system approach is being used for the program.

(G) An assessment of the sufficiency of developmental test and evaluation plans, including the use of automated data analytics or modeling and simulation tools and methodologies.

(H) A summary of the life cycle sustainment plan required under section 4324 of this title.

(I) Any other information the milestone decision authority considers relevant.

(2) CERTIFICATIONS AND DETERMINATIONS.—(A) The certifications and determination under subsection (a) with respect to a major defense acquisition program shall be submitted to the congressional defense committees with the first Selected Acquisition Report submitted under section 4351 of this title after completion of the certification.

(B) The milestone decision authority shall retain records of the basis for the certifications and determination under paragraphs (1), (2), and (3) of subsection (a).

(23) ADDITIONAL INFORMATION.—(A) At the request of any of the congressional defense committees or, in the case of intelligence or intelligence-related activities, the congressional intelligence committees, the milestone decision authority shall submit to the committee an explanation of the basis for ~~the certifications and determination under paragraphs (1), (2), and (3) of subsection (a)~~ the decision to grant Milestone B approval with respect to a major defense acquisition program or major subprogram, or further information or underlying documentation ~~for the information in a brief summary report submitted under paragraph (1), including the independent cost and schedule estimates and the independent technical risk assessments referred to in that paragraph.~~

(B) The explanation or additional information shall be submitted in unclassified form, but may include a classified annex.

(d) WAIVER FOR NATIONAL SECURITY.—(1) The milestone decision authority may, at the time of Milestone B approval or at the time that such milestone decision authority withdraws a certification or rescinds Milestone B approval pursuant to subsection (b)(2), waive the applicability to a major defense acquisition program of one or more components (as specified in

paragraph (1), (2), or (3) of subsection (a)) of the certification and determination requirements if the milestone decision authority determines that, but for such a waiver, the Department would be unable to meet critical national security objectives.

~~(2) Whenever the milestone decision authority makes such a determination and authorizes such a waiver—~~

~~(A) the waiver, the waiver determination, and the reasons for the waiver determination shall be submitted in writing to the congressional defense committees within 30 days after the waiver is authorized; and~~

~~(B) the milestone decision authority shall review the program not less often than annually to determine the extent to which such program currently satisfies the certification and determination components specified in paragraphs (1), (2), and (3) of subsection (a) until such time as the milestone decision authority determines that the program satisfies all such certification and determination components.~~

~~(3) The requirement in paragraph (2)(B) shall not apply to a program for which a certification was required pursuant to section 4377 of this title if the milestone decision authority—~~

~~(A) determines in writing that—~~

~~(i) the program has reached a stage in the acquisition process at which it would not be practicable to meet the certification component that was waived; and~~

~~(ii) the milestone decision authority has taken appropriate alternative actions to address the underlying purposes of such certification component; and~~

~~(B) submits the written determination, and an explanation of the basis for the determination, to the congressional defense committees.~~

~~(e) DESIGNATION OF CERTIFICATION STATUS IN BUDGET DOCUMENTATION.— Any budget request, budget justification material, budget display, reprogramming request, Selected Acquisition Report, or other budget documentation or performance report submitted by the Secretary of Defense to the President regarding a major defense acquisition program receiving a waiver pursuant to subsection (d) shall prominently and clearly indicate that such program has not fully satisfied the certification requirements of this section until such time as the milestone decision authority makes the determination that such program has satisfied all such certification requirements.~~

~~(f) NONDELEGATION.— The milestone decision authority may not delegate the certification requirement under subsection (a) or the authority to waive any component of such requirement under subsection (d).~~

~~(fg) Definitions.— In this section:~~

~~(1) The term “milestone decision authority”, with respect to a major defense acquisition program, means the official within the Department of Defense designated with the overall responsibility and authority for acquisition decisions for the program, including authority to approve entry of the program into the next phase of the acquisition process.~~

(2) The term “Milestone B approval” has the meaning provided that term in section 4172(e)(7) of this title.

(3) The term “core logistics capabilities” means the core logistics capabilities identified under section 2464(a) of this title.

~~(4) The term "fielding target" has the meaning given that term in section 4271(a) of this title.~~

~~(5) The term "major system component" has the meaning given that term in section 4401(b)(3) of this title.~~

~~(46) The term “congressional intelligence committees” has the meaning given that term in section 437(c) of this title.~~

(5) The term “written record of milestone decision”, with respect to a major defense acquisition program or a major subprogram means a document signed by the milestone decision authority that formalizes approved entry of the program or subprogram into the next phase of the acquisition process.



1 **SEC. \_\_\_\_ . SUPPORT FOR DISTRICT OF COLUMBIA LAW ENFORCEMENT**  
2 **ACTIVITIES.**

3 Chapter 15 of title 10, United States Code, is amended by adding at the end the following  
4 new section:

5 **“§ 285. Support for District of Columbia law enforcement activities**

6 “(a) **AUTHORITY TO PROVIDE ASSISTANCE.**—The Secretary of Defense may provide law  
7 enforcement support to the government of the District of Columbia using members of the  
8 National Guard performing duty under section 502(f) of title 32 if—

9 “(1) the Mayor of the District of Columbia requests such support; and

10 “(2) the Secretary determines that civilian law enforcement resources are not  
11 available or are insufficient.

12 “(b) **REIMBURSEMENT.**—(1) Subject to subsection (c), the government of the District of  
13 Columbia government shall reimburse the Department of Defense for the costs of support  
14 provided under this section.

15 “(2) The Secretary of Defense may waive the requirement for the government of the  
16 District of Columbia to reimburse the Department of Defense for support provided under this  
17 section if the Secretary determines that the support—

18 “(A) is being provided in the normal course of military training or operations; or

19 “(B) will result in a benefit to members of the National Guard providing the  
20 support that is substantially equivalent to that which would otherwise be obtained from  
21 military operations or training.

22 “(c) **DEPOSITING OF FUNDS.**—Any funds received by the Department of Defense from the  
23 government of the District of Columbia for costs incurred by the Department of Defense from

1 support provided under this section shall be credited, at the discretion of the Secretary of  
2 Defense, to—  
3 “(A) the appropriation, fund, or account used in incurring the obligation; or  
4 “(B) an appropriate appropriation, fund, or account currently available for the  
5 purposes for which the expenditures were made.”

### Section-by-Section Analysis

This proposal would authorize the Secretary of Defense to provide Department of Defense (DoD) assistance by members of the National Guard performing duty under section 502(f) of title 32, United States Code, in support of law enforcement activities by the government of the District of Columbia.

The Code of the District of Columbia authorizes the Mayor of the District of Columbia to request that the Secretary of Defense provide the District of Columbia National Guard to assist the District of Columbia government in the performance of civilian law enforcement activities (e.g., traffic control or crowd control). However, the District of Columbia National Guard’s size is limited (i.e., approximately 1,800 personnel) and its availability variable (e.g., personnel on leave, personnel on travel, and personnel deployed for training and exercises).

This legislative proposal would establish an option for the Secretary to provide assistance even when the District of Columbia of Columbia National Guard is either not available or not available at the capacity necessary to meet the needs of the District of Columbia government.

As the District of Columbia National Guard perform duty under section 502(f) of title 32, United States Code, this legislative proposal would provide that National Guard personnel augmenting the assistance provided by the District of Columbia National Guard would also perform duty under section 502(f).

This proposal would provide that assistance provided under this authority would be on a reimbursable basis, which is comparable to the requirements regarding Department of Defense (DoD) assistance of State or local civilian law enforcement agencies under chapter 15 of title 10, United States Code. As with DoD assistance of State or local civilian law enforcement agencies, pursuant to subsection 277(c) of title 10, this legislative proposal would authorize the Secretary of Defense to waive reimbursement if the provision of DoD assistance by the National Guard: (1) is provided in the normal course of military training or operations; or (2) results in a benefit to personnel of the National Guard providing the support that is substantially equivalent to that which would otherwise be obtained from military operations or training.

Finally, as is the case for DoD law enforcement support to a Federal agency or support to a national special security event, pursuant to subsection 277(b)(2), this legislative proposal

would provide that DoD would be able to retain funds reimbursed by the District of Columbia government to DoD.

**Resource Information:** The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2025 President’s Budget that are impacted by this proposal. If the D.C. Government reimburses DoD for this non-D.C. National Guard support, the cost estimate indicates the anticipated impact on the D.C. Government budget. If the non-D.C. National Guard support meets the conditions provided in subsection 277(c) of Title 10, U.S. Code, the Secretary of Defense may waive D.C. Government reimbursement and may direct the use of National Guard training accounts to fund such National Guard support.

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Pay and Allowance, National Guard	\$0.18 2 - \$0.49 4	\$0.18 7 - \$0.51 0	\$0.19 2 - \$0.52 3	\$0.19 7 - \$0.53 7	\$0.20 2 - \$0.5 51	Military personnel	1	80 – Special Training	N/A
Travel & Per Diem	\$0.18 5 - \$0.51 8	\$0.18 9 - \$0.52 8	\$0.19 3 - \$0.54 0	\$0.19 7 - \$0.55 1	\$0.20 1 - \$0.5 62	Operation and Maintenance	100	131 Base Operations Support	N/A
Total	\$0.36 7 - \$1.01 2	\$0.37 6 - \$1.03 8	\$0.38 7 - \$1.06 3	\$0.39 4 - \$1.08 8	\$0.4 03 - \$1.1 13				

Note: The estimate above is based on 100 non-D.C. National Guard providing support in D.C. for 5-14 days. Actual costs will depend on the specific number and duration of non-D.C. National Guard support requested by the D.C. Government and approved by the Secretary of Defense.

**Changes to Existing Law:** This proposal would establish a new Secretary of Defense authority, the full text of which is shown in the legislative language above.

1 **SEC. \_\_\_\_ . TRANSFER TO THE SPACE FORCE OF COVERED SPACE FUNCTIONS**  
2 **OF THE AIR NATIONAL GUARD OF THE UNITED STATES.**

3 (a) TRANSFER OF COVERED SPACE FUNCTIONS.—During the transition period, the  
4 Secretary of the Air Force shall transfer to the Space Force the covered space functions of the  
5 Air National Guard of the United States. Such transfer shall occur without regard to section 104  
6 of title 32, United States Code, or section 18238 of title 10, United States Code.

7 (b) TRANSFER OF UNITS.—Upon the transfer to the Space Force of the covered space  
8 functions of a unit of the Air National Guard of the United States, the Secretary of the Air Force  
9 may—

10 (1) change the status of the unit from a unit of the Air National Guard of the  
11 United States to a unit of the United States Space Force;

12 (2) deactivate the unit; or

13 (3) assign the unit a new Federal mission.

14 (c) TRANSFER OF COVERED MEMBERS.—

15 (1) OFFICERS.—During the transition period, the Secretary of Defense may, with  
16 the officer’s consent, transfer a covered officer of the Air National Guard of the United  
17 States to, and appoint the officer in, the Space Force.

18 (2) ENLISTED MEMBERS.—During the transition period, the Secretary of the Air  
19 Force may transfer each covered enlisted member of the Air National Guard of the  
20 United States to the Space Force, other than those members who do not consent to  
21 transfer. Upon such a transfer, the transferred member ceases to be a member of the Air  
22 National Guard of the United States and is discharged from the member’s enlistment as a  
23 Reserve of the Air Force.

1           (3) EFFECTIVE DATE OF TRANSFERS.—Each transfer under this subsection shall be  
2           effective on the date specified by the Secretary of Defense, in the case of an officer, or  
3           the Secretary of the Air Force, in the case of an enlisted member, but not later than the  
4           last day of the transition period.

5           (d) REGULATIONS.—Transfers under subsection (c) shall be carried out under regulations  
6           prescribed by the Secretary of Defense. In the case of an officer, applicable regulations shall  
7           include those prescribed pursuant to section 716 of title 10, United States Code.

8           (e) TERM OF INITIAL ENLISTMENT IN THE SPACE FORCE.—In the case of a covered enlisted  
9           member who is transferred to the Space Force in accordance with subsection (c), the Secretary of  
10          the Air Force may accept the initial enlistment of the member in the Space Force for a period of  
11          less than 2 years, but only if the period of enlistment in the Space Force is not less than the  
12          period remaining, as of the date of the transfer, in the member’s term of enlistment in a reserve  
13          component of the Air Force.

14          (f) END STRENGTH ADJUSTMENTS UPON TRANSFERS FROM THE AIR NATIONAL GUARD OF  
15          THE UNITED STATES.—During the transition period, upon the transfer to the Space Force of a  
16          covered space function of the Air National Guard of the United States—

17                 (1) the end strength authorized for the Space Force pursuant to section  
18                 115(a)(1)(A) of title 10, United States Code, for the fiscal year during which the transfer  
19                 occurs shall be increased by the number of billets associated with that mission; and

20                 (2) the end strength authorized for the Air National Guard of the United States  
21                 pursuant to section 115(a)(2) of such title for such fiscal year shall be decreased by the  
22                 same number.

1 (g) ADMINISTRATIVE PROVISIONS.—For purposes of the transfer of covered members of  
2 the Air National Guard of the United States in accordance with subsection (c)—

3 (1) the Air National Guard of the United States and the Space Force shall be  
4 considered to be components of the same Armed Force; and

5 (2) the Space Force officer list shall be considered to be an active-duty list of an  
6 Armed Force.

7 (h) RETRAINING AND REASSIGNMENT FOR MEMBERS NOT TRANSFERRING.—If a covered  
8 member of the Air National Guard of the United States does not consent to transfer to the Space  
9 Force in accordance with subsection (a), the Secretary of the Air Force may, as determined  
10 appropriate by the Secretary in the case of the individual member, provide the member retraining  
11 and reassignment within a reserve component of the Air Force.

12 (i) SPACE FORCE UNITS IN AFFECTED STATES.—In order to reduce the cost of transferring  
13 to the Space Force the covered space functions of the Air National Guard of the United States,  
14 and to reduce the impact of such transfer on the affected State, the following provisions apply:

15 (1) After a covered space function is transferred to the Space Force from the Air  
16 National Guard of the United States, the Space Force shall continue to perform the  
17 covered space function within the affected State;

18 (2) Except when the Secretary of the Air Force determines that it would not be in  
19 the best interests of the United States, the Secretary may not move the Space Force unit,  
20 equipment, or billets associated with the covered space function out of the affected State  
21 until—

1 (A) the Secretary of the Air Force has notified the congressional defense  
2 committees of the details of such move and provided an explanation regarding  
3 why the move is necessary to support the National Defense Strategy; and

4 (B) a period of 120 days has elapsed after the notification has been  
5 received by those committees.

6 (3) Except when the Secretary of the Air Force determines that it would not be in  
7 the best interests of the United States, the Secretary shall seek to enter into an agreement  
8 with the Governor of an affected State, to provide for the Space Force to become a tenant  
9 organization on an installation of the National Guard of the affected State at which a  
10 covered space function was executed.

11 (j) DEFINITIONS.—In this section:

12 (1) The term “covered space functions of the Air National Guard of the United  
13 States” means all Federal missions, units, personnel billets, equipment, and resources of  
14 the Air National Guard of the United States associated with the performance of a space-  
15 related function that is (as determined by the Secretary of the Air Force, in consultation  
16 with the Chief of Space Operations)—

17 (A) a core space-related function of the Space Force; or

18 (B) otherwise integral to the mission of the Space Force.

19 (2) The term “affected State” means a State or territory the National Guard of that  
20 would be affected by the transfer of covered space functions to the Space Force.

21 (3) The term “covered”, with respect to a member of the Air National Guard of  
22 the United States, has the meaning provided in section 1733(g) of the National Defense  
23 Authorization Act for Fiscal Year 2024 (Public Law 118–31; 137 Stat. 676).

1                   (4) The term “transition period” means the period beginning on the date of the  
2                   enactment of this Act and ending on the last day of the fourth fiscal year beginning after  
3                   the date of the enactment of this Act.

### **Section-by-Section Analysis**

This proposal would authorize the transfer to the Space Force of covered space functions currently performed by the Air National Guard (ANG) and includes particular provisions to facilitate the transfer.

Subsection (a) authorizes the Secretary of the Air Force to transfer to the Space Force the covered space functions of the Air National Guard of the United States. It also waives the requirement in section 104(c) of title 32, United States Code, and section 18238 of title 10, United State Code, to obtain a Governor’s consent prior to making these changes to a National Guard unit.

Subsection (b) permits the Secretary of the Air Force to take one of three actions once the space functions of a particular unit of the Air National Guard have been transferred to the Space Force. These include: (1) changing the status of the unit so that it is a Space Force unit rather than an Air National Guard unit; (2) deactivating the unit after revoking the unit’s Federal recognition; and (3) assigning the unit a new Federal mission.

Subsection (c) authorizes the Secretary of Defense to transfer, with the officer’s consent, a covered officer of the Air National Guard of the United States and appoint the officer in the Space Force. It also authorizes the Secretary of the Air Force to transfer enlisted members of the Air National Guard of the United States to the Space Force, except for an enlisted member who has withheld the officer’s consent. It also establishes that the effective date of the transfers shall be the date set by the Secretary of Defense, for officers, and a date set by the Secretary of the Air Force, for enlisted members.

Subsection (d) establishes that the transfer of covered members of the Air National Guard of the United States shall be carried out under regulations prescribed- by the Secretary of Defense.

Subsection (e) authorizes the Secretary of the Air Force to accept enlistments for less than two years for members of the Air National Guard of the United States who transfer to the Space Force.

Subsection (f) states that, upon the transfer of a covered space function to the Space Force, the personnel billets associated with that function shall also transfer to the Space Force and the Space Force end strength established pursuant to section 115(a)(1)(A) of title 10, United States Code shall increase by that number of personnel billets. Simultaneously, the end strength of the Air National Guard, established pursuant to section 115(a)(2) of title 10, United States Code, shall decrease by the same amount.



Subsection (g) establishes that, for purposes of the transfer to the Space Force of covered members of the Air National Guard of the United States, the Space Force and Air National Guard of the United States shall be considered components of the same Armed Force and the Space Force officer list shall be considered to be an active-duty list of an Armed Force. These provisions will help streamline transfers.

Subsection (h) permits the Secretary of the Air Force to offer retraining and a new assignment to any covered members of the Air National Guard of the United States who do not transfer to the Space Force.

Subsection (i) directs the Space Force to continue performing transferred Space functions in the affected State after they transfer and it establishes a 120-day notice and wait requirement before the Secretary of the Air Force may move any of the Space Force units, equipment, or billets out of the affected State. Finally, it directs the Secretary of the Air Force to seek to enter into agreements with the Governors of affected States so that the Space Force units will become tenant units on Air National Guard installations except when the Secretary of the Air Force determines that it would not be in the best interests of the United States.

Subsection (j) defines several terms for the purpose of this section, including “covered space functions of the Air National Guard of the United States,” “affected State,” “covered” as it relates to a member of the ANG, and “transition period.”

**Resource Information:**

The table below reflects the best estimate of fiscal year resources adjustments that may occur with transfer of members, missions, functions, or work of the Air National Guard of the United States to the Space Force.

	RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Total (FY25-FY29)	Appropriation	Budget Activity	BLI/SAG	PE (for all RDT&E pgms)
Space Force MILPERS	51.1	52.1	53.2	54.2	55.3	265.9	3510			
O&M	1.2	1.2	1.3	1.3	1.3	6.3	3410			
CIVPAY	6.8	6.9	7.1	7.2	7.5	35.5	3410			
Total	59.1	60.2	61.6	62.7	64.1	307.7				
Regular Air Force MILPERS	22.7	23.2	23.7	24.1	24.6	118.3	3500			
O&M	1.3	1.3	1.4	1.4	1.4	6.8	3400			
CIVPAY	1.8	1.9	1.9	1.9	2.0	9.5	3400			
Total	25.8	26.4	27.0	27.4	28.0	134.6				
Air National Guard	(-84.9)	(-86.6)	(-88.6)	(-90.1)	(-92.1)	(-442.3)	3850			

<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>				

**Note:** *The above numbers reflect current estimates for the resource impact of the transfer to the Space Force of the space functions within the Air National Guard of the United States. The estimates are subject to change through the FY2026 budget process as the supporting costs are calculated and result in transfers from the Air National Guard and Regular Air Force to the Space Force. Resource impact to the Regular Air Force reflect fiscal year adjustments to Regular Air Force resources for Active Duty Operational Support (ADOS) Military Personnel Appropriation (MPA) man-days which are funded out of the Regular Air Force military personnel appropriation account.*

**Changes to Existing Law:** This proposal would not change the text of any existing provision of law.

1 **SEC. \_\_. TREATMENT OF VETERANS WHO DID NOT REGISTER FOR THE**  
2 **SELECTIVE SERVICE.**

3 Section 3328 of title 5, United States Code, is amended by—

4 (1) in subsection (a)(1), by striking “(50 U.S.C. App. 453)” and inserting “(50  
5 U.S.C. 3802)”;

6 (2) redesignating subsection (b) as subsection (c); and

7 (3) by inserting after subsection (a) the following new subsection:

8 “(b) Subsection (a) shall not apply to an individual—

9 “(1) who is a veteran;

10 “(2) who provides evidence of active duty service to the Executive agency in  
11 which the individual seeks an appointment; and

12 “(3) for whom the requirement to register under section 3 of the Military Selective  
13 Service Act (50 U.S.C. 3802) has terminated or is now inapplicable due to age.”; and

14 (4) by adding at the end the following new subsection:

15 “(d) In this section, the terms ‘active duty’ and ‘veteran’ have the meaning given those  
16 terms in section 101 of title 38.”.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how  
the legislative text would amend existing law.]**

**Section-by-Section Analysis**

This proposal would streamline current processes and ultimately reduce time to hire while improving treatment of veterans pursuing federal employment.

The Military Selective Service Act (the Act), as amended, states that most male immigrants, and all male U.S. citizens, who are age 18 through 25, are required to register with the Selective Service. Failure to register makes a person ineligible for Federal loans, Federal job training, and Federal employment unless it has been determined that failure to register was not knowing or willful.

Pursuant to 5 U.S.C. 3328 (Selective Service registration), the Office of Personnel Management (OPM), in consultation with the Director of the Selective Service System, has authority to prescribe regulations to carry out section 3328. Section 3328 establishes two significant requirements for such regulations: (1) OPM regulations must prescribe procedures for the adjudication of determinations of whether a failure to register was knowing and willful; and (2) OPM may delegate these adjudications to the Executive agency making the appointment for which the eligibility is determined.

Some young men elect to join the military rather than register for the Selective Service. Some believe joining the military more than meets the requirement to register, while others are unaware of the requirement to register. After completing their military service, some of these veterans pursue federal employment, but agencies are unable to appoint them because of their failure to register and their inability to correct such failure due to their age. In the most recent three-year period of centralized management within the Office of Civilian Human Resources Headquarters, 177 selective service waiver request packages were submitted to OPM, averaging 59 per year. In addition, when a command could not afford to leave a position vacant pending the adjudication of a selective service waiver, hiring managers rescinded the job offer to the veteran. In those situations, no SSW package was submitted to OPM.

OPM should continue to adjudicate selective service waivers to determine whether a failure to register with the selective service was knowing and willful. However, under this proposal veterans would be exempt from this requirement. This proposal would amend section 3328 of title 5, United States Code to exempt veterans from this requirement when proof of active duty service is provided to the appointing authority and the veteran is older than 26 and no longer eligible to register. This will reduce an agency's time to hire these veterans and treat them with the deserved dignity and respect for their service.

Section 12(g) of the Military Selective Service Act already provides that a person may not be denied a right, benefit, or privilege under federal law if the requirement for that person to register has terminated or become inapplicable; and the person can show by a preponderance of evidence that failure to register was not knowing and willful. Furthermore, the Selective Service's website states that, "A person who volunteered for military service would not deliberately defy a process that might result in military service. Therefore, men who served on full-time active duty in the U.S. Armed Forces should not be denied government employment." Thus, this proposed amendment, which would streamline the hiring process for veterans is aligned with the Selective Service's own existing guidance, and would ensure there is no conflict between the law and the regulations.

**Resource Information:** This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2025 President's Budget.

**Changes to Existing Law:** This proposal would amend section 3328 of title 5, United States Code, as follows:

### **§ 3328. Selective Service registration**

(a) An individual—

(1) who was born after December 31, 1959, and is or was required to register under section 3 of the Military Selective Service Act (50 U.S.C. ~~App. 453~~ 3802); and

(2) who is not so registered or knowingly and willfully did not so register before the requirement terminated or became inapplicable to the individual, shall be ineligible for appointment to a position in an Executive agency.

(b) Subsection (a) shall not apply to an individual—

(1) who is a veteran;

(2) who provides evidence of active duty service to the Executive agency in which the individual seeks an appointment; and

(3) for whom the requirement to register under section 3 of the Military Selective Service Act (50 U.S.C. 3802) has terminated or is now inapplicable due to age.

~~(b)~~(c) The Office of Personnel Management, in consultation with the Director of the Selective Service System, shall prescribe regulations to carry out this section. Such regulations shall include provisions prescribing procedures for the adjudication of determinations of whether a failure to register was knowing and willful. Such procedures shall require that such a determination may not be made if the individual concerned shows by a preponderance of the evidence that the failure to register was neither knowing nor willful. Such procedures may provide that determinations of eligibility under the requirements of this section shall be adjudicated by the Executive agency making the appointment for which the eligibility is determined.

(d) In this section, the terms “active duty” and “veteran” have the meaning given those terms in section 101 of title 38.