Section-by-Section Analysis

TITLE I—PROCUREMENT 4

Sections 101 through 106..... 4

Section 111..... 5

Section 112..... 6

Section 201..... 11

Section 301..... 11

Section 302..... 11

Section 303..... 15

Subtitle A—Active Forces 21

Section 401..... 21

Section 411..... 21

Section 412..... 21

Section 413..... 21

Section 414..... 21

Section 415..... 22

Section 421..... 22

TITLE V—OTHER AUTHORIZATIONS 22

Subtitle A—Officer Personnel Policy Generally..... 22

Section 501..... 22

Section 511..... 26

Section 512..... 27

Section 513..... 30

Section 514..... 33

Section 515..... 35

Section 516..... 37

Section 517..... 38

Subtitle C—Member Education and Training 40

Section 521..... 40

Subtitle D—Defense Dependents' Education and Military Family Readiness Matters..... 42

Section 531..... 42

Section 532..... 44

Subtitle E—Other Matters ... 45
Section 541 ... 45
Section 542 ... 47
Section 543 ... 50
Section 544 ... 50
TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS ... 51
Subtitle A—Pay and Allowances ... 51
Section 601 ... 51
Subtitle B—Bonuses and Special Incentive Pays ... 52
Section 611 ... 53
Subtitle C—Retired Pay ... 54
Section 621 ... 55
Section 622 ... 55
Section 623 ... 56
Section 624 ... 56
Section 625 ... 56
Section 626 ... 57
Section 627 ... 57
Section 628 ... 57
Section 629 ... 57
Section 630 ... 58
TITLE VII—HEALTHCARE PROVISIONS ... 64
Subtitle A—TRICARE and other Health Care Benefits ... 64
Section 701 ... 64
Section 702 ... 78
Section 703 ... 90
Section 704 ... 91
Section 705 ... 95
Section 706 ... 99
Subtitle B—Health Care Administration ... 102
Section 711 ... 102
Section 712 ... 106
TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS ... 106
Section 801 ... 106

Section 802 ... 111
Section 803 ... 113
Section 804 ... 114
TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT ... 115
Section 901 ... 115
Section 902 ... 125
Section 903 ... 134
Section 904 ... 138
Section 905 ... 139
TITLE X—GENERAL PROVISIONS ... 141
Subtitle A—Financial Matters ... 141
Section 1001 ... 141
Section 1011 ... 143
Subtitle C—Transportation Matters ... 146
Section 1021 ... 146
Section 1022 ... 148
Section 1023 ... 150
Subtitle D—Miscellaneous Authorities and Limitations ... 152
Section 1031 ... 152
TITLE XI—[RESERVED] ... 154
TITLE XII—MATTERS RELATED TO FOREIGN NATIONS ... 154
Section 1201 ... 154
Section 1202 ... 159
Section 1203 ... 161
Section 1204 ... 162
TITLE XIII—[RESERVED] ... 164
TITLE XIV—OTHER AUTHORIZATIONS ... 164
Subtitle A—Military Programs ... 164
Section 1401 ... 165
Section 1402 ... 165
Section 1403 ... 165
Section 1404 ... 165
Section 1405 ... 165
Section 1406 ... 169

Section 1407 ... 169
Section 511 ... 170
Section 512 ... 170
TITLE XV—AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR OVERSEAS CONTINGENCY OPERATIONS ... 170
TITLE XVI—SERVICEMEMBERS CIVIL RELIEF ACT ... 170
SEC. 1615 ... 174
SEC. 1616 ... 175
TITLE XVII—UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT ... 180
DIVISION B –MILITARY CONSTRUCTION AUTHORIZATIONS ... 185
TITLE XXI—ARMY MILITARY CONSTRUCTION ... 185
TITLE XXII—NAVY MILITARY CONSTRUCTION ... 185
TITLE XXIII—AIR FORCE MILITARY CONSTRUCTION ... 185
TITLE XXIV—DEFENSE AGENCIES MILITARY CONSTRUCTION ... 185
TITLE XXV—NORTH ATLANTIC TREATY ORGANIZATION SECURITY INVESTMENT PROGRAM ... 185
TITLE XXVI—GUARD AND RESERVE FORCES FACILTIES ... 185
TITLE XXI—BASE REALIGHNMENT AND CLOSURE ACTIVITIES ... 185
TITLE XXVIII—MILITARY CONSTRUCTION GENERAL PROVISIONS ... 185
Section 2801 ... 185
Section 2802 ... 189
Section 2803 ... 195
Section 2804 ... 196
Section 2805 ... 199
Section 2806 ... 201
Section 2807 ... 203
TITLE XXIX—DEFENSE BASE CLOSURE AND REALIGNMENT ... 211
The Department needs to close and realign bases to meet strategic and fiscal imperatives. ... 211

Section-by-Section Analysis

TITLE I—PROCUREMENT

Sections 101 through 106 would authorize appropriations for fiscal year 2017 for the procurement accounts of the Department of Defense in amounts equal to the budget authority requested in the President's Budget for fiscal year 2017.

Section 111 would provide authority to use Air Force procurement funds to purchase intercontinental ballistic missile (ICBM) fuze Commercial-Off-The-Shelf (COTS) parts qualified for use during and after exposure to nuclear environments sufficient to support the life of the program. This proposal would provide for the third year (fiscal year (FY) 2017) of a planned five-year life-of-type procurement strategy (FY 2015-2019) first authorized in section 1645 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 128 Stat. 3651).

The Navy and Air Force are developing nuclear warhead fuzes for use on their respective Trident II and Minuteman III ballistic missiles. The Services are cooperating in their fuze development and production efforts at the direction of the Nuclear Weapons Council. The National Nuclear Security Administration (NNSA) is supporting both Services with Sandia National Laboratories (SNL) as the design agent and the National Security Campus (NSC-formerly the Kansas City Plant) as the production agent. This cooperation will leverage the use of common designs, processes, and parts to improve sustainability and reduce life cycle costs.

The life-of-type procurement strategy is critical to affordably buy qualified COTS parts for use during and after exposure to nuclear environments and to ensure commonality between the Air Force and the Navy. The Air Force plans to procure COTS parts common to the Minuteman III and Trident II warhead fuze programs to provide a pool of interchangeable, qualified, and certified parts. Examples of parts to be procured include: Application Specific Integrated Circuits, Radio Frequency Integrated Circuits, Heterojunction Bipolar Transistors, Wafers, Diodes, Actuators, Special Blend glass igniters, and Titanium Potassium Perchlorate Powder Igniters. Procured parts will be delivered to the NNSA's NSC for use in producing common component modules for the Air Force and Navy fuzes. Some component modules will be entirely interchangeable between the Services while others will have interchangeable subassemblies.

Procurement of these parts in quantities to support development, production, and spares is necessary because qualification and certification of COTS parts to operate during and after exposure to nuclear radiation environments is limited to a selected supplier for a particular period of production. Due to the unique military requirement for operation during and after exposure to nuclear radiation environments, the Government selects, tests, qualifies, and certifies these parts for use in nuclear weapon fuzes. This process characterizes the range of degraded performance in nuclear radiation environments which is then used in determining the design of the fuze and its component modules. The Government's qualification and certification is limited to specific production lots due to variations in supplier processes and materials which significantly change electronics performance in nuclear radiation environments. These changes in supplier processes and materials may not appreciably change performance in meeting commercial specifications. Parts available from the supplier in subsequent production lots or from other suppliers are not qualified or certified for use in nuclear weapon fuzes without retesting, requalification, and recertification and associated redesign of the fuze and its component modules, if required. If redesign is required, the parts require a new part number and separate supply chain management.

The FY 2017 President's Budget includes funding for Air Force ICBM Fuze life-of-type buy parts to coincide with Navy nuclear qualification, certification, and procurement of the same parts. These procurements must occur in FY 2017 to ensure qualified, interchangeable parts are available for the initiation of Navy fuze procurement and subsequent Air Force fuze procurement. Utilizing subsequent production lots would require separate nuclear qualification and certification processes, resulting in two pools of non-interchangeable parts, loss of commonality with the Navy fuze, increased life cycle costs, and would add significant risk to the ICBM first production unit delivery in FY 2022.

Budget Implications: The FY 2017 budget request includes $17.095 million necessary to procure these COTS parts. Additional funds for FY 2018-2019 have been programmed for follow-on procurements of additional parts. No additional funds are required to execute this authority.

Without this authority, there is a range of impacts. Assuming the program is still able to procure the same hardware for the common components, the program cost would increase by $260.2 million. This total program cost increase is comprised of $50.4 million in additional qualification costs and $209.8 million from a potential one-year program slip due to the increased development schedule.

At the other end of the range of impacts, the worst case scenario would be that the program cannot procure the same hardware for the common components and will need to redesign those components to support Air Force requirements. In this situation, the program will slip a minimum of three years to support redesign. Given this scenario, the program cost would increase by $653.9 million. This total program cost increase is comprised of $75.6 million in additional qualification costs and $578.3 million from the minimum three-year program slip due to redesign requirements. The resources reflected in the table below are funded within the FY 2017 President's Budget.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Minuteman III Modifications	17.1	6.4	9.9	0.0	0.0	Missile Procurement, Air Force	3	P-9	0101213F
Total	17.1	6.4	9.9	0.0	0.0	--	--	--	--

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

Section 112 would repeal the requirement for the Secretary of the Air Force to continue to preserve each C–5 aircraft—that was retired by the Air Force during a period in which the total inventory of strategic airlift aircraft was less than 301—in a storage condition that would allow a recall of the aircraft to future service in the Air Force Reserve, Air National Guard, or active force structure. At present, 27 C-5A aircraft are being inducted and maintained in this type of recallable storage, referred to as Type 1000 storage. This preservation requirement is costly, impractical, and prevents the cost-effective reuse of needed C-5 parts.

The Congressionally-mandated Mobility Requirements and Capabilities Study 2018 effectively demonstrates that retention of these 27 C-5A aircraft in Type 1000 (recallable) storage is unnecessary. Current Air Force analysis establishes that the most stressing strategic airlift demand can be met with existing operational fleet force structure. The Air Force is fully committed to funding the C-17A and C-5M programs. Significantly, the Air Force expects to complete its upgrade of the C-5M, completing the Reliability Enhancement and Re-engining Program (RERP) by fiscal year (FY) 2018. Completion of this program further mitigates the need to maintain legacy C-5A aircraft in Type 1000 storage.

Furthermore, as technology and requirements advance, the feasibility of recalling these preserved aircraft is significantly reduced. Recalling the C-5A aircraft from storage for use now in the operational fleet would be costly and time-consuming. Costs would be driven by factors such as individual aircraft condition, availability of parts, regeneration of modification lines, and availability of support equipment. At a minimum, all aircraft would require programmed depot maintenance (~$30 million/aircraft), engine overhaul (for which Air Force capability no longer exists), and the RERP upgrade (~$112 million/aircraft) to convert from a C-5A into an operational C-5M. The conversion of a C-5A to a C-5M would require a new contract to be created and the modification would take an estimated 15-20 months.

In addition, the FY 2013 language limits the flexibility of the Air Force to manage the inactive C-5A fleet. First, such storage is costly. To maintain an aircraft in Type 1000 storage, re-preservation is required every four years from initial 309th Aerospace Maintenance and Regeneration Group (AMARG) induction at a cost of approximately $100,000 per aircraft (FY 2017), totaling $2.7 million across the Future Years Defense Program (FYDP). Secondly, recallable storage does not allow the Air Force to recycle needed parts. These 27 aircraft remain unavailable as a source of parts for the active fleet. In FY 2014 alone, C-5A aircraft in less restrictive storage at AMARG supplied 520 parts to the active fleet, generating $9.7 million in cost avoidance to the Air Force. C-5s continue to advance in age, presenting supply demands and increased failure rates for parts previously not expected to fail. As removal of parts from C-5s in less restrictive types of storage at AMARG renders them progressively less useful, access to the Type 1000 storage aircraft becomes more critical. Diminishing manufacturing sources, component parts obsolescence, and long procurement lead times often leave AMARG reclamation as the only option to support the operational fleet parts.

Budget Implications: The table below details resource savings associated with this proposal. The Air Force can avoid $4 million in re-preservation costs across the FYDP by moving the aircraft out of Type 1000 into less restrictive storage as explained in the previous section. The savings are $148,834 per aircraft every 4-years after the induction date, which amounts to $4 million over the FYDP. The following represents the number of aircraft that will need to be re-preserved each year of the FYDP based upon when they were inducted:

FY 2017 x 1 = $148,834
FY 2018 x 12 = $1,786,000
FY 2019 x 8 = $1,190,672
FY 2020 x 1 = $148,834
FY 2021 x 5 = $744,170

This table does not include saving that would likely be obtained through cost avoidance associated with parts recycling.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
AIR FORCE	(0.1488)	(1.7866)	(1.190)	(0.1488)	(0.7441)	Operation and Maintenance, Air Force	02	21D	0708016F
Total	(0.1488)	(1.7866)	(1.190)	(0.1488)	(0.7441)	--	--	--	--

Changes to Existing Law: This proposal would make the following changes to section 141 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1659):

SEC. 141. REDUCTION IN NUMBER OF AIRCAFT REQUIRED TO BE MAINTAINED IN STRATEGIC AIRLIFT AIRCRAFT INVENTORY.

(a) REDUCTION IN INVENTORY REQUIREMENT.—Section 8062(g)(1) of title 10, United States Code, is amended by adding at the end the following new sentence: "Effective on the date that is 45 days after the date on which the report under section 141(c)(3) of the National Defense Authorization Act for Fiscal Year 2013 is submitted to the congressional defense committees, the Secretary shall maintain a total aircraft inventory of strategic airlift aircraft of not less than 275 aircraft.".

(b) MODIFICATION OF CERTIFICATION REQUIREMENT.—Section 137(d)(3)(B) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2221) is amended by striking "316 strategic airlift aircraft" and inserting "275 strategic airlift aircraft".

(c) MOBILITY REQUIREMENTS AND CAPABILITIES STUDY 2018.—

(1) IN GENERAL.—The Director of Cost Assessment and Program Evaluation and the Chairman of the Joint Chiefs of Staff, in coordination with the Commander of the United States Transportation Command and the Secretaries of the military departments, shall jointly conduct a study that assesses the end-to-end, full-spectrum mobility requirements for all aspects of the National Military Strategy derived from the National

Defense Strategy that is a result of the 2012 Defense Strategic Guidance published by the President in February 2012 and other planning documents of the Department of Defense.

(2) MATTERS INCLUDED.—The study under paragraph (1) shall include the following:

(A) A definition of what combinations of air mobility, sealift, surface movements, prepositioning, forward stationing, seabasing, engineering, and infrastructure requirements and capabilities provide low, moderate, significant and high levels of operational risk to meet the National Military Strategy.

(B) A description and analysis of the assumptions made by the Commander of the United States Transportation Command with respect to aircraft usage rates, aircraft mission availability rates, aircraft mission capability rates, aircrew ratios, aircrew production, and aircrew readiness rates.

(C) An analysis of different combinations of air mobility, sealift, surface movements, prepositioning, forward stationing, seabasing, engineering, and infrastructure requirements and capabilities required to support theater and tactical deployment and distribution, including—

(i) the identification, quantification, and description of the associated operational risk (as defined by the Military Risk Matrix in the Chairman of the Joint Chiefs of Staff Instruction 3401.01E) for each excursion as it relates to the combatant commander achieving strategic and operational objectives; and

(ii) any assumptions made with respect to the availability of commercial airlift and sealift capabilities and resources when applicable.

(D) A consideration of metrics developed during the most recent operational availability assessment and joint forcible entry operations assessment.

(E) An assessment of requirements and capabilities for major combat operations, lesser contingency operations as specified in the Baseline Security Posture of the Department of Defense, homeland defense, defense support to civilian authorities, other strategic missions related to national missions, global strike, the strategic nuclear mission, and direct support and time-sensitive airlift missions of the military departments.

(F) An examination, including a discussion of the sensitivity of any related conclusions and assumptions, of the variations regarding alternative modes (land, air, and sea) and sources (military, civilian, and foreign) of strategic and theater lift, and variations in forward basing, seabasing, prepositioning (afloat and ashore), air-refueling capability, advanced logistics concepts, and destination theater austerity, based on the new global footprint and global presence initiatives.

(G) An identification of mobility capability gaps, shortfalls, overlaps, or excesses, including—

(i) an assessment of associated risks with respect to the ability to conduct operations; and

(ii) recommended mitigation strategies where possible.

(H) An identification of mobility capability alternatives that mitigate the potential impacts on the logistic system, including—

(i) a consideration of traditional, non-traditional, irregular, catastrophic, and disruptive challenges; and

(ii) a description of how derived mobility requirements and capabilities support the accepted balance of risk in addressing all five categories of such challenges.

(I) The articulation of all key assumptions made in conducting the study with respect to—

(i) risk;

(ii) programmed forces and infrastructure;

(iii) readiness, manning, and spares;

(iv) scenario guidance from defense planning scenarios and multi-service force deployments;

(v) concurrency of major operations;

(vi) integrated global presence and basing strategy;

(vii) host nation or third-country support;

(viii) use of weapons of mass destruction by an enemy; and

(ix) aircraft being used for training or undergoing depot maintenance or modernization.

(J) A description of the logistics concept of operations and assumptions, including any support concepts, methods, combat support forces, and combat service support forces that are required to enable the projection and enduring support to forces both deployed and in combat for each analytic scenario.

(K) An assessment, and incorporation as necessary, of the findings, conclusions, capability gaps, and shortfalls derived from the study under section 112(d) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1318).

(3) SUBMISSION.—The Director of Cost Assessment and Program Evaluation and the Chairman of the Joint Chiefs of Staff shall jointly submit to the congressional defense committees a report containing the study under paragraph (1).

(4) FORM.—The report required by paragraph (3) shall be submitted in unclassified form, but may include a classified annex.

~~(d) PRESERVATION OF CERTAIN RETIRED C–5 AIRCRAFT.—The Secretary of the Air Force shall preserve each C–5 aircraft that is retired by the Secretary during a period in which the total inventory of strategic airlift aircraft of the Secretary is less than 301, such that the retired aircraft—~~

~~(1) is stored in flyable condition;~~

~~(2) can be returned to service; and~~

~~(3) is not used to supply parts to other aircraft unless specifically authorized by the Secretary of Defense upon a request by the Secretary of the Air Force.~~

(e) DEFINITIONS.—In this section:

(1) The term “mobility” means the—

(A) deployment, sustainment, and redeployment of the personnel and equipment needed to execute the National Defense Strategy to air and seaports of embarkation, intertheater deployment to air and seaports of debarkation, and intratheater deployment to tactical assembly areas; and

(B) the employment of aerial refueling assets and intratheater movement and infrastructure in support of deployment and sustainment of combat forces.

(2) The term "National Military Strategy" means the National Military Strategy prescribed by the Chairman of the Joint Chiefs of Staff under section 153 of title 10, United States Code.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Section 201 would authorize appropriations for fiscal year 2017 for the research, development, test, and evaluation accounts of the Department of Defense in amounts equal to the budget authority requested in the President's Budget for fiscal year 2017.

TITLE III—OPERATION AND MAINTENANCE

Section 301 would authorize appropriations for fiscal year 2017 for the Operation and Maintenance accounts of the Department of Defense in amounts equal to the budget authority requested in the President's Budget for fiscal year 2017.

Section 302 would allow the Secretaries of the military departments to retain and expend funds received from a State as a share of the fees and charges collected by the State to support or enhance 9-1-1 emergency services. The States are authorized to collect the fees and charges via charges on telephone bills under section 6(f) of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615a-1(f)).

Although the military departments could currently seek a portion of the fees and charges collected by the States under 47 U.S.C. 615a-1, without a statutory exception to the miscellaneous receipts statute (31 U.S.C. 3302), any fees and charges collected would go to the Treasury and could not be used to offset expenses incurred by military installations to support or enhance 9-1-1 emergency services, many of which benefit local civilian communities.

This proposal would allow the military departments to retain any amounts the States may (at their discretion) provide from the fees and charges they collect under 47 U.S.C. 615a-1, and to use the funds in support of 9-1-1 emergency services without further appropriation.

Budget Implications: Enhanced capability. Military installations would receive State funding and apply towards the operating cost. Military installations have capability gaps when compared to off-post civilian counterparts. A statutory exception to the Miscellaneous Receipts Statute, 31 U.S.C. 3302, would allow installations to receive the 9-1-1 State Grant to close these gaps. The Department of Treasury will need to create a special fund receipt account for receipts 9-1-1 State grants and make the funds immediately available for expenditures to support enhanced 9-1-1 services for the military installation on whose behalf the application of the State grant was made.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Appropriation To	Budget Activity	Dash-1 Line Item	Program Element
Army	1.8	1.8	1.8	1.8	1.8	Operation and Maintenance,	01	131	0202079 A

						Army			
Air Force	.9	.9	.9	.9	.9	Operation and Maintenance, Air Force	01	011Z	Various
Navy does not intend to use this authority, which would have been funded in the following account: Operation and Maintenance, Navy. Marine Corps does not intend to use this authority, which would have been funded in the following account: Operation and Maintenance, Marine Corps.									
Total	2.7	2.7	2.7	2.7	2.7				

PERSONNEL AFFECTED									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	0	0	0	0	0				
Air Force	0	0	0	0	0				
Navy	0	0	0	0	0				
Total	0	0	0	0	0				

Changes to Existing Law: This proposal would make the following changes to section 6 of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615a-1):

SEC. 6. DUTY TO PROVIDE 9-1-1 AND ENHANCED 9-1-1 SERVICE.

(a) DUTIES.—It shall be the duty of each IP-enabled voice service provider to provide 9-1-1 service and enhanced 9-1-1 service to its subscribers in accordance with the requirements of the Federal Communications Commission, as in effect on the date of enactment of the New and Emerging Technologies 911 Improvement Act of 2008 [July 23, 2008] and as such requirements may be modified by the Commission from time to time.

(b) PARITY FOR IP-ENABLED VOICE SERVICE PROVIDERS.—An IP-enabled voice service provider that seeks capabilities to provide 9-1-1 and enhanced 9-1-1 service from an entity with ownership or control over such capabilities, to comply with its obligations under subsection (a), shall, for the exclusive purpose of complying with such obligations, have a right of access to such capabilities, including interconnection, to provide 9-1-1 and enhanced 9-1-1 service on the same rates, terms, and conditions that are provided to a provider of commercial mobile service (as such term is defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d))), subject to such regulations as the Commission prescribes under subsection (c).

(c) REGULATIONS.—The Commission—

(1) within 90 days after the date of enactment of the New and Emerging Technologies 911 Improvement Act of 2008 [July 23, 2008], shall issue regulations implementing such act, including regulations that—

(A) ensure that IP-enabled voice service providers have the ability to exercise their rights under subsection (b);

(B) take into account any technical, network security, or information privacy requirements that are specific to IP-enabled voice services; and

(C) provide, with respect to any capabilities that are not required to be made available to a commercial mobile service provider but that the Commission determines under subparagraph (B) of this paragraph or paragraph (3) are necessary for an IP-enabled voice service provider to comply with its obligations under subsection (a), that such capabilities shall be available at the same rates, terms, and conditions as would apply if such capabilities were made available to a commercial mobile service provider;

(2) shall require IP-enabled voice service providers to which the regulations apply to register with the Commission and to establish a point of contact for public safety and government officials relative to 9-1-1 and enhanced 9-1-1 service and access; and

(3) may modify such regulations from time to time, as necessitated by changes in the market or technology, to ensure the ability of an IP-enabled voice service provider to comply with its obligations under subsection (a) and to exercise its rights under subsection (b).

(d) DELEGATION OF ENFORCEMENT TO STATE COMMISSIONS.—The Commission may delegate authority to enforce the regulations issued under subsection (c) to State commissions or other State or local agencies or programs with jurisdiction over emergency communications. Nothing in this section is intended to alter the authority of State commissions or other State or local agencies with jurisdiction over emergency communications, provided that the exercise of such authority is not inconsistent with Federal law or Commission requirements.

(e) IMPLEMENTATION.—

(1) LIMITATION.—Nothing in this section shall be construed to permit the Commission to issue regulations that require or impose a specific technology or technological standard.

(2) ENFORCEMENT.—The Commission shall enforce this section as if this section was a part of the Communications Act of 1934. For purposes of this section, any violations of this section, or any regulations promulgated under this section, shall be considered to be a violation of the Communications Act of 1934 or a regulation promulgated under that Act, respectively.

(f) STATE AUTHORITY OVER FEES.—

(1) AUTHORITY.—Nothing in this Act, the Communications Act of 1934 (47 U.S.C. 151 et seq.), the New and Emerging Technologies 911 Improvement Act of 2008, or any Commission regulation or order shall prevent the imposition and collection of a fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State, political subdivision thereof, Indian tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act, as amended (85 Stat. 688) for the support or implementation of 9-1-1 or enhanced 9-1-1 services, provided that the fee or charge is obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services, as specified in the provision of State or local law adopting the fee or charge. For each class of subscribers to IP-enabled voice services, the fee or charge may not exceed the amount of any such fee or charge applicable to the same class of subscribers to telecommunications services.

(2) FEE ACCOUNTABILITY REPORT.—To ensure efficiency, transparency, and accountability in the collection and expenditure of a fee or charge for the support or implementation of 9-1-1 or enhanced 9-1-1 services, the Commission shall submit a report within 1 year after the date of enactment of the New and Emerging Technologies 911 Improvement Act of 2008 [July 23, 2008], and annually thereafter, to the Committee on Commerce, Science and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives detailing the status in each State of the collection and distribution of such fees or charges, and including findings on the amount of revenues obligated or expended by each State or political subdivision thereof for any purpose other than the purpose for which any such fees or charges are specified.

(3) FEES PROVIDED TO MILITARY INSTALLATIONS.—If the Secretary of a military department receives from a State, pursuant to an application by the Secretary or otherwise, an amount remitted to the Secretary as a share of the fees and charges collected by the State under this subsection from persons residing on a military installation under the Secretary's jurisdiction within the State, such amount shall be credited to appropriations available for that military department to support or implement 9-1-1 or enhanced 9-1-1 services for that military installation and shall be available for such purposes subject to the same availability, conditions, and limitations as the appropriation to which credited.

(g) AVAILABILITY OF PSAP INFORMATION.—The Commission may compile a list of public safety answering point contact information, contact information for providers of selective routers, testing procedures, classes and types of services supported by public safety answering points, and other information concerning 9-1-1 and enhanced 9-1-1 elements, for the purpose of assisting IP-enabled voice service providers in complying with this section, and may make any portion of such information available to telecommunications carriers, wireless carriers, IP-enabled voice service providers, other emergency service providers, or the vendors to or agents of any such carriers or providers, if such availability would improve public safety.

(h) DEVELOPMENT OF STANDARDS.—The Commission shall work cooperatively with public safety organizations, industry participants, and the E-911 Implementation Coordination Office to develop best practices that promote consistency, where appropriate, including procedures for—

(1) defining geographic coverage areas for public safety answering points;

(2) defining network diversity requirements for delivery of IP-enabled 9-1-1 and enhanced 9-1-1 calls;

(3) call-handling in the event of call overflow or network outages;

(4) public safety answering point certification and testing requirements;

(5) validation procedures for inputting and updating location information in relevant databases; and

(6) the format for delivering address information to public safety answering points.

(i) RULE OF CONSTRUCTION.—Nothing in the New and Emerging Technologies 911 Improvement Act of 2008 shall be construed as altering, delaying, or otherwise limiting the ability of the Commission to enforce the Federal actions taken or rules adopted obligating an IP-enabled voice service provider to provide 9-1-1 or enhanced 9-1-1 service as of the date of enactment of the New and Emerging Technologies 911 Improvement Act of 2008 [July 23, 2008].

Section 303 would amend 39 U.S.C. 3401 to provide flexibility to the Department of Defense (DoD) in managing and implementing the "free mail" program and authorize surface transportation as an option for mail returning to the United States from Military Post Offices (MPOs), potentially saving tens of millions of dollars in mail transportation costs for Army.

Subsection (a) of the proposal would modify the "free mail" program under 39 U.S.C. 3401(a), which is intended as a mechanism for members of the Armed Forces to remain in touch with friends and loved ones using personal correspondence for a temporary period of time or as long as the member does not have access to stamps and envelopes, usually in what is currently defined as a contingency operation. Subsection (a) would make three changes to simplify the administration of the program and enable DoD to develop workable procedures to reduce the potential for abuse.

First, subsection (a) would replace the five circumstances when free may be available to U.S. service members. Rather than having to characterize the nature of an operation to determine if a service member is eligible for free mail, the proposal would narrow the question to whether or not it is a contingency operation in an area designated by the President. The Department of Defense would no longer have to determine for purposes of the Free Mail program whether U.S. forces were engaged in an action against an enemy of the U.S., engaged in military operations involving armed conflict with a hostile armed force, engaged in temporary military operations under arduous circumstances, serving with a friendly foreign force in an armed conflict in which the U.S. is not a belligerent, or temporarily deployed overseas for an operational contingency in arduous circumstances.

Since there is no language in 39 U.S.C. 3401 citing when the authorization for free mail should sunset, subsection (a) of the proposal would clarify which service members have access to the free mail program – namely those deployed overseas in a contingency operation. This would help dissuade the perception that the free mail program is an entitlement (for example, recently commanders, citing arduous circumstances, requested free mail at a location where service members lived in condominiums in a city with pizza delivery and ample recreational activities). Furthermore, by significantly streamlining eligibility for the program, this one change would relieve field commanders, who are sometimes reluctant to turn off the privilege even when operations have stabilized and full access to mail service is established, from having to make that decision.

Second, subsection (a) would eliminate free mail benefits for foreign soldiers working alongside our troops. Current language allows international free mail, which is administratively challenging to manage within the modern worldwide postal community. Such international mail has to be returned to the United States Postal Service (USPS) in the U.S. to be transported back to the foreign country, increasing transportation costs to both the Army (as the sole bill payer for the free mail program) and USPS. Since the statute applies to mail entering the U.S., benefits should align with this requirement and not to a third country. The international mail system exists to provide mail services between countries. If a foreign soldier mails a letter from a third country outside the military postal service, they would be required to purchase international postage for delivery—charges that are shared between the delivery and accepting postal services.

DoD should not subsidize this postage and transportation cost while at the same time limiting the privilege for some of our wounded warriors.

Third, subsection (a) would extend the free mail program to all hospitalized service members who were wounded in a designated area. Currently, the law limits the free mail privilege to service members wounded in a designated area who are in hospitals under DoD control. This unintentionally excludes wounded service members who may be transferred to a civilian hospital for specialty care. The proposed text would allow any hospitalized service member who was wounded in a designated area to send free mail.

Subsection (b) of the proposal would allow mail coming back to the United States from an MPO to be transported by surface shipment and would reduce mail transportation costs. Currently, 39 U.S.C. 3401 allows mail being sent to MPOs to be sent via surface transportation consistent with the type of service purchased by the mailer, but the statute prohibits surface transportation when sending mail from an MPO back to the U.S. or to another MPO. The forced upgrade of sending all mail from MPOs via air transportation (only to have it then shipped via surface transport once it enters the U.S.) is costly to DoD and exceeds the service the mailer purchased for moving the item. There is a significant cost difference between surface and air modes of transportation, with the air mode costing over five times more. Allowing flexibility in modes of transportation consistent with the service purchased by the mailer would allow DoD to avoid the increased costs incurred as a result of upgrading transportation of these items to air mode.

The changes to the free mail program under subsection (a) of the proposal would clarify the law and eliminate the administrative challenges in managing the program. Additionally, these changes to the program would likely reduce free mail administrative costs as the time spent on managing the program would decrease and the conditions to implement would be better defined to eliminate any potential abuse of the privilege.

Subsection (b) of the proposal would result in service members (outside of the free mail program) paying for the type of mail service they desired. A service member (or authorized civilian) could choose to mail their items using air transport at higher postage rates (with revenue going only to USPS) rather than slower, less expensive surface transportation. Anecdotal information from the field suggests that mailers will choose the lower cost when mailing and incur the increased delivery time.

Budget Implications: This proposal would not cost the Department any money for the free mail portion and anecdotally should reduce administrative costs for time spent managing this program. Current expenditures by the Army for free mail are $3.4 million per year, with that expected to be reduced as the conflicts in Southwest Asia draw down. Essentially, Free Mail under subsection (a) is a revenue neutral proposal.

The second part of the proposal, related to modes of transportation, would avoid costs for DoD. Depending on the policies developed and consistent with the mailer's choice of transportation, DoD savings would vary. DoD moved over 36.3 million pounds (16.5M kilograms (kgs)) of mail from MPOs back to the U.S. in 2013 at a cost of $90.3 million. Military

Postal Service Agency estimates that approximately one third of this mail 12.1 million pounds (5.5M kgs) could qualify for surface shipment based on the criteria in the proposal (parcels >15 lbs) and customer choice of cheaper postage and slower delivery time. The average cost for mail moving by air from MPOs back to the U.S. is $12.03 per pound ($5.47 per kg). The average cost of surface shipment is less than $2 per pound ($1 per kg) and varies since the container fills up due to the size of items before it reaches its weight limit from those same items. The movement of the estimated 12.1 million pounds (5.5M kgs) by air would cost approximately $30,085,000. Moving these items by surface container would cost less than $5.5 million, resulting in a cost avoidance of over $24.5 million. The three military departments share the costs for mail transportation, with Army having 74 percent of the cost, Navy having18 percent, and Air Force having 8 percent. Based on the above example, when this could be implemented after FY17, this would result in reducing Army costs from $22.3 million to $4.1 million, Navy costs from $5.4 million to $1.0 million, and Air Force costs from $2.4 million to approximately $.4 million. The cost avoidance for Army is $18.1 million, Navy is $4.4 million, and Air Force is over $1.9 million. These are conservative figures based on estimates of qualified mail and cost avoidance may be much greater depending on mailer choices. This does not affect personnel other than choice of paying for air transport or surface transport. The resources reflected in the tables below are funded within the FY 2017 President's Budget.

RESOURCE REQUIREMENTS Surface transportation ($Millions)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash 1 Line Item**	**Program Element**
Army	22.3	22.3	4.1	4.1	4.1	Operation and Maintenance, Army	404	421	0708010A
Navy/ Marine Corps	5.4	5.4	1.0	1.0	1.0	Operation and Maintenance, Navy	404	570	0708010N
Air Force	2.4	2.4	.4	.4	.4	Operation and Maintenance, Air Force	404	41A	0708010F
Total	30.1	30.1	5.5	5.5	5.5				

RESOURCE REQUIREMENTS Free Mail Only ($Millions)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	3.4	1.5	1.5	1.5	1.5	Operation and Maintenance, Army	404	421	0708010A
Total	3.4	1.5	1.5	1.5	1.5	Operational and Maintenance, Army	404	421	0708010A

* The Army is the Executive Agent for the Military Postal Service and free mail was given to the Army as part of this process. No other service pays for the free-mail.

PERSONNEL AFFECTED Free Mail (estimated recipients)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	60,000	40,000	40,000	40,000	40,000	Operation and Maintenance, Army	404	421	0708010A
Navy	20,000	4,000	4,000	4,000	4,000	Operational and Maintenance, Army	404	421	0708010A
Air Force	10,000	2,000	2,000	2,000	2,000	Operation and Maintenance, Army	404	421	0708010A
Marine Corps	10,000	0	0	0	0	Operation and Maintenance, Army	404	421	0708010A
Total	100,000	46,000	46,000	46,000	46,000	Operation and Maintenance, Army	404	421	0708010A

Changes to Existing Law: This proposal would make the following changes to section 3401 of title 39, United States Code:

§ 3401. Mailing privileges of members of Armed Forces of the United States ~~and of friendly foreign nations~~

~~(a) Letter mail or sound- or video-recorded communications having the character of personal correspondence shall be carried, at no cost to the sender, in the manner provided by this section, when mailed by—~~

~~(1) an individual who is a member of the Armed Forces of the United States on active duty, as defined in section 101 of title 10, or a civilian, otherwise authorized to use postal services at Armed Forces installations, who holds a position or performs one or more functions in support of military operations, as designated by the military theater commander, and addressed to a place within the delivery limits of a United States post office, if—~~

~~(A) such letter mail or sound- or video-recorded communication is mailed by such individual at an Armed Forces post office established in an overseas area, as designated by the President, where the Armed Forces of the United States are engaged in action against an enemy of the United States, engaged in military operations involving armed conflict with a hostile foreign force, engaged in temporary military operations under arduous circumstances, serving with a friendly foreign force in an armed conflict in which the United States is not a belligerent, or temporarily deployed overseas for an operational contingency in arduous circumstances, as determined by the Secretary of Defense; or~~

~~(B) such individual is hospitalized in a facility under the jurisdiction of the Armed Forces of the United States as a result of disease or injury incurred as a result of service in an overseas area designated by the President under clause (A) of this paragraph; or~~

~~(2) a member of an armed force of a friendly foreign nation at an Armed Forces post office and addressed to a place within the delivery limits of a United States post office, or a post office of the nation in whose armed forces the sender is a member, if—~~

~~(A) the member is accorded free mailing privileges by his own government;~~

~~(B) the foreign nation extends similar free mailing privileges to a member of the Armed Forces of the United States serving with, or in, a unit under the control of a command of that foreign nation;~~

~~(C) the member is serving with, or in, a unit under the operational control of a command of the Armed Forces of the United States;~~

~~(D) such letter mail or sound- or video-recorded communication is mailed by the member—~~

~~(i) at an Armed Forces post office established in an overseas area, as designated by the President, where the Armed Forces of the United States are engaged in action against an enemy of the United States, engaged in military operations involving armed conflict with a hostile foreign force, or serving with a friendly foreign force in an armed conflict in which the United States is not a belligerent; or~~

~~(ii) while hospitalized in a facility under the jurisdiction of the Armed Forces of the United States as a result of disease or injury incurred as a result of services in an overseas area designated by the President under clause (D)(i) of this paragraph; and~~

~~(E) the nation in whose armed forces the sender is a member has agreed to assume all international postal transportation charges incurred.~~

(a) First Class Letter mail correspondence shall be carried, at no cost to the sender, in the manner provided by this section, when mailed by an individual who is a member of the Armed Forces of the United States on active duty, as defined in section 101 of title 10, or a civilian, otherwise authorized to use postal services at Armed Forces installations, who is providing support to military operations, as designated by the military theater commander, and addressed to a place within the delivery limits of a United States post office, if—

(1) such letter mail is mailed by such individual at an Armed Forces post office established in an overseas area designated by the President, where the Armed Forces of the United States are deployed for a contingency operation as determined by the Secretary of Defense; or

(2) such individual is hospitalized as a result of disease or injury incurred as a result of service in an overseas area designated by the President under paragraph (1).

~~(b) There shall be transported by air, between Armed Forces post offices which are located outside the 48 contiguous States of the United States or between any such Armed Forces post office and the point of embarkation or debarkation within the United States, the territories and possessions of the United States in the Pacific area, the Commonwealth of Puerto Rico, or the Virgin Islands, on a space available basis, on certificated United States air carriers or, for carriage of mail in foreign air transportation, other air carriers, air taxi operators or foreign air carriers as permitted by section 5402 of this title, or on military aircraft, the following categories of mail matter:~~

~~(1)(A) letter mail or sound- or video-recorded communications having the character of personal correspondence;~~

~~(B) parcels not exceeding 15 pounds in weight and 60 inches in length and girth combined; and~~

~~(C) publications entitled to a periodical publication rate published once each week or more frequently and featuring principally current news of interest to members of the Armed Forces and the general public,~~

~~which are mailed at or addressed to any such Armed Forces post office;~~

~~(2) parcels not exceeding 70 pounds in weight and the maximum size allowed by the Postal Service for fourth class parcel post (known as "Standard Mail (B)"), which are mailed at any such Armed Forces post office; and~~

~~(3) parcels exceeding 15 pounds but not exceeding 70 pounds in weight and not exceeding the maximum size allowed by the Postal Service for fourth class parcel post (known as "Standard Mail (B)"), including surface-type official mail, which are mailed at or addressed to any such Armed Forces post office where adequate surface transportation is not available.~~

(b) There shall be transported by either surface or air, between Armed Forces post offices or from an Armed Forces post office to a point of entry into the United States, the following categories of mail matter which are mailed at any such Armed Forces post office:

(1) Letter mail communications having the character of personal correspondence.

(2) Any parcel exceeding one pound in weight but less than 70 pounds in weight and less than 130 linear inches (length plus girth).

(3) Publications published once each week or more frequently and featuring principally current news of interest to members of the Armed Forces and the general public.

(c) Any parcel, other than a parcel mailed at a rate of postage requiring priority of handling and delivery, not exceeding 30 pounds in weight and 60 inches in length and girth combined, which is mailed at or addressed to any Armed Forces post office established under section 406(a) of this title, shall be transported by air on a space available basis on certificated United States air carriers or, for carriage of mail in foreign air transportation, other air carriers, air taxi operators or foreign air carriers as permitted by section 5402 of this title, or on military aircraft, upon payment of a fee for such air transportation in addition to the rate of postage otherwise applicable to such a parcel not transported by air.

(d) The Department of Defense shall transfer to the Postal Service as postal revenues, out of any appropriations or funds available to the Department of Defense, as a necessary expense of the appropriations or funds and of the activities concerned, the equivalent amount of postage due, as determined by the Postal Service, for matter sent in the mails under authority of subsection (a) of this section.

(e) The Department of Defense shall transfer to the Postal Service as postal revenues, out of any appropriations or funds available to the Department of Defense, as a necessary expense of the appropriations or funds and of the activities concerned, sums equal to the expenses incurred by the Postal Service, as determined by the Postal Service, in providing air transportation for

mail mailed at or addressed to Armed Forces post offices established under section 406 of this title, but reimbursement under this subsection shall not include the expense of air transportation (1) for which the Postal Service collects a special charge to the extent the special charge covers the additional expense of air transportation or (2) that is provided by the Postal Service at the same postage rate or charge for mail which is neither mailed at nor addressed to an Armed Forces post office.

(f) This section shall be administered under such conditions, and under such regulations, as the Postal Service and the Secretary of Defense jointly may prescribe.

(g) In this section:

(1) The term "military aircraft" means an aircraft owned, operated, or chartered by the Department of Defense.

(2) The term "United States air carrier" has the meaning given the term "air carrier" in section 40102 of title 49.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

Section 401 would prescribe the personnel strengths for the active forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense in the President's Budget for fiscal year 2017.

Subtitle B—Reserve Forces

Section 411 would prescribe the end strengths for the Selected Reserve of each reserve component of the Armed Forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense, and the Department of Homeland Security for the Coast Guard Reserve, in the President's Budget for fiscal year 2017.

Section 412 would prescribe the end strengths for reserve component members on full-time active duty or full-time National Guard duty for the purpose of administering the reserve forces for fiscal year 2017.

Section 413 would prescribe the end strengths for dual-status technicians of the reserve components of the Army and Air Force for fiscal year 2017.

Section 414 would prescribe the maximum end strengths for non-dual status technicians of the reserve components of the Army and Air Force for fiscal year 2017. The maximum end strength for the Army Reserve set forth in subsection (a)(2) assumes the enactment of legislation contained in section 416 that would change the method used to authorize and account for non-dual status technicians from a numerical limit to a percentage of the workforce.

Section 415 would prescribe the maximum number of reserve personnel authorized to be on active duty for operational support.

Subtitle C—Authorization of Appropriations

Section 421 would authorize appropriations for fiscal year 2017 for military personnel.

TITLE V—OTHER AUTHORIZATIONS

Subtitle A—Officer Personnel Policy Generally

Section 501 would amend section 638a of title 10, United States Code, to provide the Secretaries of the military departments' authority to consider officers for involuntary separation below the grade of lieutenant colonel or commander as a single consolidated year group without distinctions based on retirement eligibility. Such a change allows the military departments to conduct separation boards in a manner consistent with promotion selection board practices.

This change will allow separation determinations based solely on overall manner of performance. The type of subsequent separation, either retirement with full entitlements, early retirement with full benefits but reduced annuity under Temporary Early Retirement Authority, or involuntary separation with applicable separation pay will be determined based on each officer's service computation. This authority would allow a fairer competition among similarly qualified officers for continuation of service during the drawdown of forces.

The numbers of Army officers impacted would be approximately 500 officers in Year Group 2009; 500 officers in Year Group 2010, and 500 officers in Year Group 2011. These individuals would be at the Captain-level (O3) at date of separation. No Majors would be impacted.

Budget Implications: This proposal is cost neutral for budgetary planning because the separations affected are already programmed. The proposed changes would alter the composition of the Officer group under consideration not the number of Officers expected to separate. Any changes to the individual entitlements would be consistent with the natural variation already accounted for in the composite rate used in the budget estimates. Therefore, enactment of this proposal would not change the Army's estimates for Separation costs in the FYDP.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash 1 Line Item**	**Program Element**
Army									
Navy									
Air Force									
Marines									

Total									

Note: This proposal has no impact on the number of personnel projected to be separated.

*PERSONNEL AFFECTED									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash 1 Line Item**	**Program Element**
Army									
Navy									
Air Force									
Marines									
Total									

Changes to Existing Law: This proposal would make the following changes to title 10, United States Code:

§ 638a. Modification to rules for continuation on active duty; enhanced authority for selective early retirement and early discharges

(a)(1) The Secretary of Defense may authorize the Secretary of a military department to take any of the actions set forth in subsection (b) with respect to officers of an armed force under the jurisdiction of that Secretary.

(2) Any authority provided to the Secretary of a military department under paragraph (1) shall expire on the date specified by the Secretary of Defense, but such expiration date may not be later than December 31, 2018.

(b) Actions which the Secretary of a military department may take with respect to officers of an armed force when authorized to do so under subsection (a) are the following:

(1) Shortening the period of the continuation on active duty established under section 637 of this title for a regular officer who is serving on active duty pursuant to a selection under that section for continuation on active duty.

(2) Providing that regular officers on the active-duty list may be considered for early retirement by a selection board convened under section 611(b) of this title in the case of officers described in any of subparagraphs (A) through (C) as follows:

(A) Officers in the regular grade of lieutenant colonel or commander who would be subject to consideration for selection for early retirement under section 638(a)(1)(A) of this title except that they have failed of selection for promotion only one time (rather than two or more times).

(B) Officers in the regular grade of colonel or, in the case of the Navy, captain who would be subject to consideration for selection for early retirement under section 638(a)(1)(B) of this title except that they have served on active duty in that grade less than four years (but not less than two years).

(C) Officers, other than those described in subparagraphs (A) and (B), holding a regular grade below the grade of colonel, or in the case of the Navy, captain, who are eligible for retirement under section 3911, 6323, or 8911 of this title, or who after two additional years or less of active service would be eligible for retirement under one of

those sections and whose names are not on a list of officers recommended for promotion.

(3) Convening selection boards under section 611(b) of this title to consider for discharge regular officers on the active-duty list in a grade below lieutenant colonel or commander--

(A) who have served at least one year of active duty in the grade currently held;

(B) whose names are not on a list of officers recommended for promotion; and

(C) who are not eligible to be retired under any provision of law (other than by reason of eligibility pursuant to section 4403 of the National Defense Authorization Act for Fiscal Year 1993) and are not within two years of becoming so eligible.

(4) Convening selection boards under section 611(b) of this title to consider for early retirement or discharge regular officers on the active-duty list in a grade below lieutenant colonel or commander—

(A) who have served at least one year of active duty in the grade currently held; and

(B) whose names are not on a list of officers recommended for promotion.

(c)(1) In the case of an action under subsection (b)(2), the Secretary of the military department concerned shall specify the number of officers described in that subsection which a selection board convened under section 611(b) of this title pursuant to the authority of that subsection may recommend for early retirement. Such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.

(2) In the case of an action authorized under subsection (b)(2), the Secretary of Defense may also authorize the Secretary of the military department concerned when convening a selection board under section 611(b) of this title to consider regular officers on the active-duty list for early retirement to include within the officers to be considered by the board reserve officers on the active-duty list on the same basis as regular officers.

(3) In the case of an action under subsection (b)(2), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all eligible officers described in that subsection in a particular grade and competitive category; or

(B) the names of all eligible officers described in that subsection in a particular grade and competitive category who are also in particular year groups, specialties, or retirement categories, or any combination thereof, within that competitive category.

(4) In the case of an action under subsection (b)(2), the Secretary of Defense may also authorize the Secretary of the military department concerned to waive the five-year period specified in section 638(c) of this title if the Secretary of Defense determines that it is necessary for the Secretary of that military department to have such authority in order to meet mission needs.

(d)(1) In the case of an action under subsection (b)(3), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all officers described in that subsection in a particular grade and competitive category; or

(B) the names of all officers described in that subsection in a particular grade and competitive category who also are in particular year groups or specialties, or both, within that competitive category.

(2) The Secretary concerned shall specify the total number of officers to be recommended for discharge by a selection board convened pursuant to subsection (b)(3). That number may not be more than 30 percent of the number of officers considered—

(A) in each grade in each competitive category, except that through December 31, 2018, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade; or

(B) in each grade, year group, or specialty (or combination thereof) in each competitive category, except that through December 31, 2018, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade.

(3) The total number of officers described in subsection (b)(3) from any of the armed forces (or from any of the armed forces in a particular grade) who may be recommended during a fiscal year for discharge by a selection board convened pursuant to the authority of that subsection may not exceed 70 percent of the decrease, as compared to the preceding fiscal year, in the number of officers of that armed force (or the number of officers of that armed force in that grade) authorized to be serving on active duty as of the end of that fiscal year.

(4) An officer who is recommended for discharge by a selection board convened pursuant to the authority of subsection (b)(3) and whose discharge is approved by the Secretary concerned shall be discharged on a date specified by the Secretary concerned.

(5) Selection of officers for discharge under this subsection shall be based on the needs of the service.

(e)(1) In the case of action under subsection (b)(4), the Secretary of the military department concerned shall specify the total number of officers described in that subsection that a selection board convened under section 611(b) of this title pursuant to the authority of that subsection may recommend for early retirement or discharge. Officers who are eligible, or are within two years of becoming eligible, to be retired under any provision of law (other than by reason of eligibility pursuant to section 4403 of the National Defense Authorization Act for Fiscal Year 1993), if selected by the board, shall be retired or retained until becoming eligible to retire under section 3911, 6323, or 8911 of this title, and those officers who are otherwise ineligible to retire under any provision of law shall, if selected by the board, be discharged.

(2) In the case of action under subsection (b)(4), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all eligible officers described in that subsection, whether or not they are eligible to be retired under any provision of law, in a particular grade and competitive category; or

(B) the names of all eligible officers described in that subsection in a particular grade and competitive category, whether or not they are eligible to be retired under any provision of law, who are also in particular year groups, specialties, or retirement categories, or any combination thereof, within that competitive category.

(3) The number of officers specified under paragraph (1) may not be more than 30 percent of the number of officers considered.

(4) An officer who is recommended for discharge by a selection board convened pursuant to the authority of subsection (b)(4) and whose discharge is approved by the Secretary concerned shall be discharged on a date specified by the Secretary concerned.

(5) Selection of officers for discharge under this subsection shall be based on the needs of the service.

(~~e~~f) The discharge or retirement of an officer pursuant to this section shall be considered to be involuntary for purposes of any other provision of law.

Subtitle B—Reserve Component Management

Section 511 would repeal the requirement for the commander of an active duty unit associated with an Army Selected Reserve unit to review promotion recommendations for unit vacancy promotions. Currently, section 1113 of the Army National Guard Combat Readiness Reform Act of 1992 (which was enacted as title XI of the National Defense Authorization Act for Fiscal Year 1993) requires commanders of associated active duty units to review candidates for unit vacancy promotions and inform the promotion authority within 60 days of receiving notice of a recommended promotion whether he, the active duty commander, concurs or nonconcurs with the unit vacancy promotion. Because the Army no longer has associate units of this type, section 1113 is obsolete. Furthermore, the Army has established other processes for review of reserve component promotions.

Budget Implications: This proposal will not have budgetary implications because the underlying "association" referenced in the law no longer exists. The "associations" have been replaced by training partnerships, which do not include review of promotions. The cessation of the activity and the removal of the provision from the law will not consume any resources.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash 1 Line Item**	**Program Element**
Army	0	0	0	0	0				
Army National Guard	0	0	0	0	0				
Army Reserves	0	0	0	0	0				
Total	0	0	0	0	0				

PERSONNEL AFFECTED									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash 1 Line Item**	**Program Element**
Army	0	0	0	0	0				
Army National Guard	0	0	0	0	0				
Army Reserves	0	0	0	0	0				
Total	0	0	0	0	0				

Changes to Existing Law: This proposal would make the following change to the Army National Guard Combat Readiness Reform Act of 1992 (title XI of Public Law 102-484; 10 U.S.C. 10105 note):

~~**SEC. 1113. REVIEW OF OFFICER PROMOTIONS BY COMMANDER OF ASSOCIATED ACTIVE DUTY UNIT.**~~

~~(a) REVIEW.—Whenever an officer in an Army Selected Reserve unit as defined in subsection (b) is recommended for a unit vacancy promotion to a grade above first lieutenant, the recommended promotion shall be reviewed by the commander of the active duty unit associated with the Selected Reserve unit of that officer or another active-duty officer designated by the Secretary of the Army. The commander or other active-duty officer designated by the Secretary of the Army shall provide to the promoting authority, through the promotion board convened by the promotion authority to consider unit vacancy promotion candidates, before the promotion is made, a recommendation of concurrence or nonconcurrence in the promotion. The recommendation shall be provided to the promoting authority within 60 days after receipt of notice of the recommended promotion.~~

~~(b) COVERAGE OF SELECTED RESERVE COMBAT AND EARLY DEPLOYING UNITS.—(1) Subsection (a) applies to officers in all units of the Selected Reserve that are designated as combat units or that are designated for deployment within 75 days of mobilization.~~

~~(2) Subsection (a) shall take effect with respect to officers of the Army Reserve, and with respect to officers of the Army National Guard in units not subject to subsection (a) as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996 [Feb. 10, 1996], at the end of the 90-day period beginning on such date of enactment.~~

~~(c) REPORT ON FEASIBILITY.—The Secretary of the Army shall submit to the Committees on Armed Services of the Senate and House of Representatives a report, not later than March 1, 1993, containing a plan for implementation of subsection (a). The Secretary may include with the report such proposals for legislation to clarify, improve, or modify the provisions of subsection (a) in order to better carry out the purposes of those provisions as the Secretary considers appropriate.~~

Section 512 would add a new section to chapter 1003 of title 10, United States Code, that would revise the Army's deployability rating system and the manner in which the Army is required to track prioritization of deployable units. To the extent that the new section in chapter 1003 would apply across all Army components, it would facilitate implementation of the Army Total Force Policy by requiring systems to identify the priority of deployment and to track readiness for all Army units, not just for the reserve components.

Currently, the Army is operating under the statutory construct set out in the Army National Guard Combat Readiness Reform Act (ANGCRRA) of 1992 (title XI of Public Law 102-484; 10 U.S.C. 10105 note), which was enacted after the experience of Operation Desert Storm where several Army National Guard combat brigades were mobilized but not deployed to combat.

Section 1121(Deployability Rating System) of ANGCRRA requires the Secretary of the Army to "modify" the readiness rating system to assess the deployability of reserve component units. The proposal would not alter the substance of the readiness rating system. Instead, the proposal would extend the readiness rating system to all components, mirroring our current practice.

Section 1135 (Deployment Planning Reform) of ANGCRRA requires the Secretary of the Army to develop a system for prioritizing mobilization of reserve component units that uses the Unit Deployment Designator system (UDDS). Current Army systems are better than UDDS and reflect the lessons learned over the course of 13 years of war. The proposal would give the Secretary of the Army the flexibility to use the current Army system that provides a uniform mechanism for evaluating the readiness of all Army units, regardless of component. Using the Army's current system, Unit C-levels assess how well a unit is resourced and trained, measured against the requirements necessary to perform its core functions and/or provide the fundamental capability for which it was designed. When appropriate, units report assigned mission readiness or A-level. The unit A-level assesses how well a unit is resourced and trained, measured against the requirements specified by the Army Tasking Authority for the mission assigned to the unit for planning and/or execution. Units with an assigned mission, to include missions requiring deployment, begin to report A-levels (1) when directed by the chain of command, (2) when training focus shifts to the assigned mission, or (3) at Latest Arrival Date (LAD) minus 270/730 days for Active and Reserve Component units respectively. The proposed new section facilitates the use of current, improved Army systems.

The proposal would also repeal section 1121 and 1135 of the ANGCRRA since they would become obsolete if the new section is added to chapter 1003 of title 10.

Budget Implications: None explicitly but the consolidation and simplification as well as the avoidance of possible future legal obstacles due to antiquated and unclear authorities will likely save some indeterminate amount of resources in terms of staff time and effort.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash 1 Line Item**	**Program Element**
Army	0	0	0	0	0				
Army National Guard	0	0	0	0	0				
Army Reserves	0	0	0	0	0				
Total	0	0	0	0	0				

PERSONNEL AFFECTED									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash 1 Line Item**	**Program Element**
Army	0	0	0	0	0				
Army National Guard	0	0	0	0	0				
Army Reserves	0	0	0	0	0				
Total	0	0	0	0	0				

Changes to Existing Law: The proposal would add a new section to chapter 1003 of title 10, United States Code, as shown above, and would make the following changes to the Army National Guard Combat Readiness Reform Act of 1992 (title XI of Public Law 102-484; 10 U.S.C. 10105 note):

SEC. 1101. SHORT TITLE.

This title may be cited as the "Army National Guard Combat Readiness Reform Act of 1992".

* * * * *

Subtitle B—Assessment of National Guard Capability

* * * * *

~~**SEC. 1121. DEPLOYABILITY RATING SYSTEM.**~~

~~The Secretary of the Army shall modify the readiness rating system for units of the Army Reserve and Army National Guard to ensure that the rating system provides an accurate assessment of the deployability of a unit and those shortfalls of a unit that require the provision of additional resources. In making such modifications, the Secretary shall ensure that the unit readiness rating system is designed so—~~

~~(1) that the personnel readiness rating of a unit reflects—~~

~~(A) both the percentage of the overall personnel requirement of the unit that is manned and deployable and the fill and deployability rate for critical occupational specialties necessary for the unit to carry out its basic mission requirement; and~~

~~(B) the number of personnel in the unit who are qualified in their primary military occupational specialty; and~~

~~(2) that the equipment readiness assessment of a unit—~~

~~(A) documents all equipment required for deployment;~~

~~(B) reflects only that equipment that is directly possessed by the unit;~~
~~(C) specifies the effect of substitute items; and~~
~~(D) assesses the effect of missing components and sets on the readiness of major equipments items.~~

*　　*　　*　　*　　*

Subtitle C—Compatibility of Guard Units With Active Component Units

*　　*　　*　　*　　*

~~SEC. 1135. DEPLOYMENT PLANNING REFORM.~~

~~(a) REQUIREMENT FOR PRIORITY SYSTEM.—The Secretary of the Army shall develop a system for identifying the priority for mobilization of Army reserve component units. The priority system shall be based on regional contingency planning requirements and doctrine to be integrated into the Army war planning process.~~

~~(b) UNIT DEPLOYMENT DESIGNATORS.—The system shall include the use of Unit Deployment Designators to specify the post-mobilization training days allocated to a unit before deployment. The Secretary shall specify standard designator categories in order to group units according to the timing of deployment after mobilization.~~

~~(c) USE OF DESIGNATORS.—(1) The Secretary shall establish procedures to link the Unit Deployment Designator system to the process by which resources are provided for National Guard units.~~

~~(2) The Secretary shall develop a plan that allocates greater funding for training, full-time support, equipment, and manpower in excess of 100 percent of authorized strength to units assigned unit deployment designators that allow fewer post-mobilization training days.~~

~~(3) The Secretary shall establish procedures to identify the command level at which combat units would, upon deployment, be integrated with active component forces consistent with the Unit Deployment Designator system.~~

Section 513 is a technical change to section 115 of title 10, United States Code (section 115). This proposal updates the references to section 502(f) of title 32, United States Code (section 502(f)). Section 502(f) was amended in 2006 by section 525 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (NDAA for FY07). The NDAA for FY07 did not make the necessary conforming amendments to section 115 to reflect the change.

The NDAA for FY07 amended section 502(f) to revise the training or duty that could be performed by the National Guard. The changes included designating the existing subsection as a new paragraph (1) and redesignating existing paragraphs (1) and (2) as subparagraphs (A) and (B). This proposal would amend section 115 to reference the correct paragraph and subparagraph of section 502(f) following the changes made by the NDAA for FY07.

Budget Implications: This proposal is a technical change without budget implications. The technical change will add conforming amendments to meet the intent of the law.

RESOURCE REQUIREMENTS ($MILLIONS)					
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**
Air Force	0	0	0	0	0
Army	0	0	0	0	0
Navy	0	0	0	0	0
Marine Corps	0	0	0	0	0
USCG	0	0	0	0	0
Total	0	0	0	0	0

Changes to Existing Law: This proposal would make the following changes to section 115 of title 10, United States Code:

§ 115. Personnel Strengths: requirements for annual authorization

* * * * *

(b) Certain Reserves on Active Duty To Be Authorized by Law.-(1) Congress shall annually authorize the maximum number of members of a reserve component permitted to be on active duty or full-time National Guard duty at any given time who are called or ordered to-

(A) active duty under section 12301(d) of this title for the purpose of providing operational support, as prescribed in regulation issued by the Secretary of Defense;

(B) full-time National Guard duty under section ~~502(f)(2)~~502(f)(1)(B) of title 32 for the purpose of providing operational support when authorized by the Secretary of Defense;

(C) active duty under section 12301(d) of this title or full-time National Guard duty under section ~~502(f)(2)~~502(f)(1)(B) of title 32 for the purpose of preparing for and performing funeral honors functions for funerals of veterans under section 1491 of this title;

(D) active duty or retained on active duty under sections 12301(g) of this title while in a captive status; or

(E) active duty or retained on active duty under 12301(h) or 12322 of this title for the purpose of medical evaluation or treatment.

(2) A member of a reserve component who exceeds either of the following limits shall be included in the strength authorized under subparagraph (A) or subparagraph (B), as appropriate, of subsection (a)(1):

(A) A call or order to active duty or full-time National Guard duty that specifies a period greater than three years.

(B) The cumulative periods of active duty and full-time National Guard duty performed by the member exceed 1095 days in the previous 1460 days.

(3) In determining the period of active service under paragraph (2), the following periods of active service performed by a member shall not be included:

(A) All periods of active duty performed by a member who has not previously served in the Selected Reserve of the Ready Reserve.

(B) All periods of active duty or full-time National Guard duty for which the member is exempt from strength accounting under paragraphs (1) through (8) of subsection (i).

(4) As part of the budget justification materials submitted by the Secretary of Defense to Congress in support of the end strength authorizations required under subparagraphs (A) and (B) of subsection (a)(1) for fiscal year 2009 and each fiscal year thereafter, the Secretary shall provide the following:

(A) The number of members, specified by reserve component, authorized under subparagraphs (A) and (B) of paragraph (1) who were serving on active duty or full-time National Guard duty for operational support beyond each of the limits specified under subparagraphs (A) and (B) of paragraph (2) at the end of the fiscal year preceding the fiscal year for which the budget justification materials are submitted.

(B) The number of members, specified by reserve component, on active duty for operational support who, at the end of the fiscal year for which the budget justification materials are submitted, are projected to be serving on active duty or full-time National Guard duty for operational support beyond such limits.

(C) The number of members, specified by reserve component, on active duty or full-time National Guard duty for operational support who are included in, and counted against, the end strength authorizations requested under subparagraphs (A) and (B) of subsection (a)(1).

(D) A summary of the missions being performed by members identified under subparagraphs (A) and (B).

* * * * *

(i) Certain Personnel Excluded From Counting for Active-Duty End Strengths.-In counting personnel for the purpose of the end strengths authorized pursuant to subsection (a)(1), persons in the following categories shall be excluded:

(1) Members of a reserve component ordered to active duty under section 12301(a) of this title.

(2) Members of a reserve component in an active status ordered to active duty under section 12301(b) of this title.

(3) Members of the Ready Reserve ordered to active duty under section 12302 of this title.

(4) Members of the Selected Reserve of the Ready Reserve or members of the Individual Ready Reserve mobilization category described in section 10144(b) of this title ordered to active duty under section 12304 of this title.

(5) Members of the National Guard called into Federal service under section 12406 of this title.

(6) Members of the militia called into Federal service under chapter 15 of this title.

(7) Members of the National Guard on full-time National Guard duty under section ~~502(f)(1)~~502(f)(1)(A) of title 32.

(8) Members of reserve components on active duty for training or full-time National Guard duty for training.

(9) Members of the Selected Reserve of the Ready Reserve on active duty to support programs described in section 1203(b) of the Cooperative Threat Reduction Act of 1993 (22 U.S.C. 5952(b)).

(10) Members of the National Guard on active duty or full-time National Guard duty for the purpose of carrying out drug interdiction and counter-drug activities under section 112 of title 32.

(11) Members of a reserve component on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System.

(12) Members of the National Guard on full-time National Guard duty for the purpose of providing command, administrative, training, or support services for the National Guard Challenge Program authorized by section 509 of title 32.

(13) Members of the National Guard on full-time National Guard duty involuntarily and performing homeland defense activities under chapter 9 of title 32.

Section 514 This proposal would extend the authorization to allow officers to participate in the Inactive National Guard (ING) from December 31, 2016 until the period ending on December 31, 2019. The extension would give the National Guard more flexibility to access departing active component members during the drawdown and provide a five year period to evaluate the benefits of ING transferability.

The ING is the National Guard counterpart to the Individual Ready Reserve (IRR). The ING provides options for service members to take a career intermission without separating from the service. It provides the National Guard flexible options by supporting continuum of service to retirement, managing service members' long-term career goals, supporting civilian career demands, promoting retention in the service, and providing an alternative to discharge or separation.

The authorizing statute (32 U.S.C. 303) does not authorize the transfer of officers from active status in the Selected Reserve to the ING. It authorizes the transfer of enlisted service members only. The FY14 NDAA section 512 authorizes officers to benefit from the ING authority, similar to enlisted personnel until December 31, 2016.

Extending this authorization to transfer officers to the ING will continue to provide enhanced career options for commissioned officers who require or desire to take a career intermission. Officers will be able to take a mid-career break in service to pursue activities inconsistent with the demands of drilling status and remain productively affiliated with the National Guard. This enhances the long-term retention of officers in the Selected Reserve. Additionally, retaining these trained and qualified officers reduces the expense of training replacement officers if those officers opt to separate from service instead.

This authority could also be used to transfer officers into the ING who are pending "Withdraw of Federal Recognition" (WOFR) for misconduct or other administrative reason. Under the current WOFR process, these officers can still attend monthly drills with their unit. This can be a disruption to training and affect morale if the officer accused is in the same unit as the other soldier(s) he or she may have victimized.

Budget Implications: Only the Army National Guard of the United States plans to use this authority and therefore, the budget table only includes a cost for the Army. The Air National

Guard of the United States does not intend to use this authority. Costs for this proposal are limited to annual muster pay for the officers transferred to the ING during that time. Additionally, costs would be offset by savings in reduced participation costs, but the Army National Guard did not estimate these savings. The resources reflected in the table below are funded within the FY 2017 President's Budget.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	.134	.270	.406			National Guard Personnel, Army	01	040	0904901A
Air National Guard does not intend to use this authority, which would have been funded in the following account: National Guard Personnel, Air Force									
Total	.134	.270	.406						

NUMBER OF Personnel AFFECTED									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	100	125	150			National Guard Personnel, Army	01	040	0904901A
Air National Guard does not intend to use this authority, which would have been funded in the following account: National Guard Personnel, Air Force									
Total	100	125	150						

Changes to Existing Law: This proposal would make the following changes to section 512 of the National Defense Authorization Act for Fiscal Year 2014:

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2014

SEC. 512. REMOVAL OF RESTRICTIONS ON THE TRANSFER OF OFFICERS BETWEEN THE ACTIVE AND INACTIVE NATIONAL GUARD.

(a) ARMY NATIONAL GUARD. – During the period ending on ~~December 31, 2016~~ December 31, 2019, under regulations prescribed by the Secretary of the Army:

(1) An officer of the Army National Guard who fills a vacancy in a federally recognized unit of the Army National Guard may be transferred from the active Army National Guard to the inactive Army National Guard.

(2) An officer of the Army National Guard transferred to the inactive Army National Guard pursuant to paragraph (1) may be transferred from the inactive Army National Guard to the active Army National Guard to fill a vacancy in a federally recognized unit.

(b) AIR NATIONAL GUARD. – During the period ending on ~~December 31, 2016~~ December 31, 2019, under regulations prescribed by the Secretary of the Air Force:

(1) An officer of the Air National Guard who fills a vacancy in a federally recognized unit of the Air National Guard may be transferred from the active Air National Guard to the inactive Air National Guard.

(2) An officer of the Air National Guard transferred to the inactive Air National Guard pursuant to paragraph (1) may be transferred from the inactive Air National Guard to the active Air National Guard to fill a vacancy in a federally recognized unit.

Section 515 would extend, for one year, the current temporary authority for the Air Force to allow no more than 50 Active Guard and Reserve (AGR) personnel and dual status military technicians[1] to instruct and train active duty and members of foreign military forces in the United States of the Commonwealth of Puerto Rico or possessions of the United States as a primary duty. The Air Force is currently preparing the report to Congress analyzing all current activation authorities as required by section 514(b) of the National Defense Authorization Act for Fiscal Year (FY) 2016 (Public Law 114-92), and anticipates this proposal would need to be submitted to Congress before that report is submitted. A one-year extension would allow Congress and the Air Force time to review and consider the contents of the report and evaluate the effects of the implemented authority, without disrupting pilot training operations.

The purpose of this authority is to facilitate the Air Force's efforts to fully integrate its components and to increase the number of instructor pilots in the Reserve Components (RC) as recommended by the National Commission on the Structure of the Air Force (NCSAF)[2].

This proposal is consistent with current laws that treat maintenance as a Total Force mission. Military technicians serving under both titles 10 and 32 of the United States Code (U.S.C.) are currently authorized to maintain and repair supplies issued to the armed forces – without regard to the parent component (10 U.S.C. 10216 and 32 U.S.C. 709) – as a primary duty. The proposed extension would continue to allow up to 50 AGRs and technicians to continue instructing and training pilots without regard to parent component for one additional year.

Budget Implications: This proposed legislation is budget neutral. It does not increase or decrease workload, manpower, or facility requirements. It does not increase or change the

---

[1] Dual status military technicians are Federal civilian employees who are required to maintain membership in the Selected Reserve as a condition of employment. 5 United States Code (U.S.C.) 3101, 32 U.S.C. 709 and 10 U.S.C. 10216(a).

[2] National Commission on the Structure of the Air Force, *Report to the President and Congress of the United States*, January 30, 2014 (hereinafter "*NCSAF Report*"), pp. 38, 42. Two of the NCSAF members expressly stated that they wanted "to emphasize and make clear that the findings and recommendations provided in this report were based on and are intended to be applied solely to the U.S. Air Force, including both its Active and Reserve Components." *Id.* at 53. Because "[t]he differences among the military services and the characteristics of their Reserve Components are significant," the Report stated that an attempt to apply its recommendations to other services might be inappropriate. *Id.* The changes in this proposal are vital to efficient, future, and integrated Air Force operations. While the Air Force believes the changes would also benefit the other services, it respectfully defers to the sister services' analyses of the proposed changes on their operations.

currently-authorized number of AGR and technician personnel or shift the training mission to the RCs. Nevertheless, comptrollers advised that the budget table should reflect the number of affected personnel, even if that number does not represent an increase. Accordingly, the budget table shows an equal division of the total 50 between Air Force Reserve and Air National Guard personnel. Technicians were not included in the budget table because the budgetary numbers are lower for technicians. Reporting all positions as potentially AGRs ensures that there will not be a budgetary shortfall. This is the most conservative approach.

The proposed extension would also allow the Air Force to increase its reimbursement from foreign governments for AGR and technician instructor salary costs in FY 2017. Without the extension, the Air Force's ability to seek reimbursement is limited because AGRs' and technicians' statutory primary duty will return to benefitting only the RC; training foreign military students would only be authorized as an additional duty. AGR's and technician's salaries are attributed to their primary not their additional duties, and thus, without the extension, foreign student training in FY 2017 would generally not be reimbursable. The resources reflected in the table below are funded within the FY 2017 President's Budget.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Air Force Reserve (AFR) Technicians	0	0	0	0	0	N/A	N/A	N/A	N/A
AFR AGRs	4.45	0	0	0	0	Military Personnel, Air Force Reserve	01	90	01
Air National Guard (ANG) Technicians	0	0	0	0	0	N/A	N/A	N/A	N/A
ANG AGR	3.68	0	0	0	0	National Guard Personnel, Air Force	01	90	01
Total	8.13	0	0	0	0	--	--	--	--

NUMBER OF PERSONNEL AFFECTED								
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
AFR Technicians	0	0	0	0	0	N/A	N/A	N/A
AFR AGRs	25	0	0	0	0	Military Personnel, Air Force Reserve	01	90
ANG Technicians	0	0	0	0	0	N/A	N/A	N/A
ANG AGRs	25	0	0	0	0	National Guard Personnel, Air	01	90

						Force		
Total	50	0	0	0	0			

Changes to Existing Law: This proposal would make the following change to section 514 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 129 Stat. yyy):

SEC. 514. TEMPORARY AUTHORITY TO USE AIR FORCE RESERVE COMPONENT PERSONNEL TO PROVIDE TRAINING AND INSTRUCTION REGARDING PILOT TRAINING.

(a) AUTHORITY.—

(1) IN GENERAL.—During fiscal year 2016 <u>and fiscal year 2017</u>, the Secretary of the Air Force may authorize personnel described in paragraph (2) to provide training and instruction regarding pilot training to the following:

(A) Members of the Armed Forces on active duty.

(B) Members of foreign military forces who are in the United States.

(2) PERSONNEL.—The personnel described in this paragraph are the following:

(A) Members of the reserve components of the Air Force on active Guard and Reserve duty (as that term is defined in section 101(d) of title 10, United States Code) who are not otherwise authorized to conduct the training described in paragraph (1) due to the limitations in section 12310 of title 10, United States Code.

(B) Members of the Air Force who are military technicians (dual status) who are not otherwise authorized to conduct the training described in paragraph (1) due to the limitations in section 10216 of title 10, United States Code, and section 709(a) of title 32, United States Code.

(3) LIMITATION.—Not more than 50 members described in paragraph (2) may provide training and instruction under the authority in paragraph (1) at any one time.

(4) FEDERAL TORT CLAIMS ACT.—Members of the uniformed services described in paragraph (2) who provide training and instruction pursuant to the authority in paragraph (1) shall be covered by the Federal Tort Claims Act for purposes of any claim arising from the employment of such individuals under that authority.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Air Force shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth a plan to eliminate shortages in the number of pilot instructors within the Air Force using authorities available to the Secretary under current law.

Section 516 would reconcile a contradiction between two provisions in law pertaining to the requirements for enlistment in the reserve components of the Armed Forces. Title 10, U.S.C. section 504, addresses the qualifications for enlistment into the Armed Forces, and title 10, U.S.C. section 12102 more specifically addresses qualifications for enlistment in the reserve components.

This proposal would eliminate the potential for misinterpretation of the citizenship requirements for enlistment in the reserve components of the Armed Forces caused by inconsistencies in two provisions of law by simply aligning the language in 10 U.S.C. 12102(b)

with the language in 10 U.S.C. 504(b). This alignment is achieved by striking the existing language in section 12102(b) and instead referencing the language in section 504(b).

Budget Implications: This proposal has no cost. There is no expectation that this modification will either increase or decrease the number of individuals seeking enlistment in the reserve components of the Armed Forces.

Changes to Existing Law: This proposal would make the following changes to section 12102 of title 10, United States Code:

§ 12102. Reserve components: qualifications

(a) To become an enlisted member of a reserve component a person must be enlisted as a Reserve of an armed force and subscribe to the oath prescribed by section 502 of this title, or be transferred to that component according to law. In addition, to become an enlisted member of the Army National Guard of the United States or the Air National Guard of the United States, he must meet the requirements of section 12107 of this title.

(b) Except as otherwise provided by law, the Secretary concerned shall prescribe physical, mental, moral, professional, and age qualifications for the enlistment of persons as Reserves of the armed forces under his jurisdiction. However, no person may be enlisted as a Reserve unless—

(1) ~~he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);~~ that person has met the citizenship or residency requirements established in section 504(b)(1) of this title; or

(2) ~~he~~.~~has previously served in the armed forces or in the National Security Training Corps~~ that person is authorized to enlist by the Secretary concerned under section 504(b)(2) of this title.

(c) A person who is otherwise qualified, but who has a physical defect that the Secretary concerned determines will not interfere with the performance of the duties to which that person may be assigned, may be enlisted as a Reserve of any armed force under the jurisdiction of that Secretary.

Section 517 is a technical correction to section 1175a of title 10, United States Code (section 1175a). This proposal updates the references to section 502(f) of title 32, United States Code (section 502(F)), and updates the list of involuntary mobilization authorities.

Section 502(f) was amended in 2006 by section 525 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (NDAA for FY07). The NDAA for FY07 did not make the necessary conforming amendments to section 1175a to reflect the change. The involuntary mobilization authorities under section 12304a and 12304b were added to title 10 by sections 515 and 516 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA for FY12).

The NDAA for FY12 did not make a conforming amendment to the list of involuntary mobilization authorities in section 1175a to include 12304a and 12304b.

This proposal would amend section 1175a to refer to the correct paragraph and subparagraph of section 502(f) and to include references to section 12304a and 12304b in the list of involuntary mobilization authorities.

Budget Implications: The technical change concerning 32 U.S.C. 502(f)(1)(A) and 32 U.S.C. 502(f)(1)(b) does not have a budget implication. In addition, the Services will not budget for the addition of 10 U.S.C. 12304a or 10 U.S.C. 12304b to 10 U.S.C. 1175a. If 12304a and 12304b are added to the list of involuntary authorities, a potential future recoupment may not be realized. However, such a recoupment is not part of budget planning and therefore, this proposal does not have budget implications.

The table that shows the number of personnel affected are all the reserve component personnel DOD plans to involuntarily mobilize under the 10 U.S.C. 12304b authority. Since most of the personnel who received VSP are in the IRR, the actual number involuntarily mobilized under this authority, and therefore who will be affected by this proposal, is a much smaller subset that DOD cannot currently identify.

RESOURCE REQUIREMENTS ($M)											
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
USAF	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	NA	NA	NA	NA
Army	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	NA	NA	NA	NA
Navy	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	NA	NA	NA	NA
USMC	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	NA	NA	NA	NA
USCG	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	NA	NA	NA	NA
Total	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	NA	NA	NA	NA

NUMBER OF PERSONNEL AFFECTED								
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**	
Air Force	0	1130	1130	1130	1130	1130	1130	
Army	0	1010	1010	1010	1010	1010	1010	
Navy	0	215	500	500	500	500	500	
Marine Corps	0	270	354	336	456	450	450	
Total	0	2625	2994	2976	3096	3090	3090	

Changes to Existing Law: This proposal would make the following changes to section 1175a of title 10, United States Code:

§ 1175a. Reserve components generally

* * * * *

(j) Repayment for Members Who Return to Active Duty.—

(1) Except as provided in paragraphs (2) and (3), a member of the armed forces who, after having received all or part of voluntary separation pay under this section, returns to active duty shall have deducted from each payment of basic pay, in such schedule of monthly installments as the Secretary concerned shall specify, until the total amount deducted from such basic pay equals the total amount of voluntary separation pay received.

(2) Members who are involuntarily recalled to active duty or full-time National Guard duty in accordance with section 12301(a), 12301(b), 12301(g), 12302, 12303, ~~or 12304~~ 12304, 12304a, or 12304b of this title or section ~~502(f)(1)~~ 502(f)(1)(A) of title 32 shall not be subject to this subsection.

(3) Members who are recalled or perform active duty or full-time National Guard duty in accordance with section 101(d)(1), 101(d)(2), 101(d)(5), 12301(d) (insofar as the period served is less than 180 consecutive days with the consent of the member), 12319, or 12503 of this title, or section 114, 115, or ~~502(f)(2)~~ 502(f)(1)(B) of title 32 (insofar as the period served is less than 180 consecutive days with consent of the member), shall not be subject to this subsection.

(4) The Secretary of Defense may waive, in whole or in part, repayment required under paragraph (1) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States. The authority in this paragraph may be delegated only to the Undersecretary of Defense for Personnel and Readiness and the Principal Deputy Undersecretary of Defense for Personnel and Readiness.

Subtitle C—Member Education and Training

Section 521 will add 10 U.S.C. 12304b to the list of authorities that qualify as active duty for Post 9/11 GI Bill benefits. RC members accrue active duty that qualifies for Post 9/11 GI Bill benefits when they volunteer to perform active duty under 10 U.S.C. 12301(d) in addition to other involuntary activation authorities. This proposal will allow RC members who are involuntarily activated under 10 U.S.C. 12304b to receive the same benefits of those RC members who have volunteered to perform duty.

Currently, two RC members who are serving side-by-side on active duty may not receive similar Post 9/11 GI Bill eligibility benefits. The RC member who volunteered for active duty (12301(d)) will have their active duty time count toward the aggregate required for Post 9/11 GI Bill eligibility. The RC member who was involuntarily activated under 12304b for similar duty will not have their active duty time count toward the aggregate for Post 9/11 GI Bill eligibility.

The involuntarily activated RC member may be making additional sacrifices with their civilian career or family situation during the activation than the voluntary RC member. Equity suggests

the benefits of both voluntarily and involuntarily activated RC members for identical duty should be the same.

Budget Implications: The Department of Defense (DoD) has no responsibility for funding of the basic benefits of the Post-9/11 GI Bill. Costs for the Post-9/11 GI Bill are borne by the Department of Veterans Affairs, under the provisions of section 3324(b) of title 38, which states, "Payments for entitlement to educational assistance earned under this chapter shall be made from funds appropriated to, or otherwise made available to, the Department for the payment of readjustment benefits." While DoD has estimates regarding the number of personnel affected and cost to carry out this proposal, there is no budget implication to DoD.

Changes to Existing Law: This proposal amends section 3301 of title 38, United States Code, as follows:

Title 38

§3301. Definitions

In this chapter:

(1) The term "active duty" has the meanings as follows (subject to the limitations specified in sections 3002(6) and 3311(b)):

(A) In the case of members of the regular components of the Armed Forces, the meaning given such term in section 101(21)(A).

(B) In the case of members of the reserve components of the Armed Forces, service on active duty under a call or order to active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, ~~or 12304~~ 12304, or 12304b of title 10 or section 712 of title 14.

(C) In the case of a member of the Army National Guard of the United States or Air National Guard of the United States, in addition to service described in subparagraph (B), full-time service-

(i) in the National Guard of a State for the purpose of organizing, administering, recruiting, instructing, or training the National Guard; or

(ii) in the National Guard under section 502(f) of title 32 when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

(2) The term "entry level and skill training" means the following:

(A) In the case of members of the Army, Basic Combat Training and Advanced Individual Training or One Station Unit Training.

(B) In the case of members of the Navy, Recruit Training (or Boot Camp) and Skill Training (or so-called "A" School).

(C) In the case of members of the Air Force, Basic Military Training and Technical Training.

(D) In the case of members of the Marine Corps, Recruit Training and Marine Corps Training (or School of Infantry Training).

(E) In the case of members of the Coast Guard, Basic Training and Skill Training (or so-called "A" School).

(3) The term "program of education" has the meaning given such term in section 3002, except to the extent otherwise provided in section 3313.

(4) The term "Secretary of Defense" means the Secretary of Defense, except that the term means the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

Subtitle D—Defense Dependents' Education and Military Family Readiness Matters

Section 531 would repeal section 1411 of the Defense Dependents' Education Act of 1978 (20 U.S.C. 929) which established the Advisory Council on Dependents' Education (ACDE), a Federal advisory committee for the Department of Defense's overseas K-12 school system, the defense dependents' education system. The ACDE, established in 1978, was established to ensure DoD effectively operated this overseas school system because, at the time, DoD did not have a single educational entity to manage the DoD overseas dependent school system. The defense dependents' education system and the defense domestic elementary and secondary schools (located on installations in the United States) are operated by the Department of Defense Education Activity (DoDEA). The DoDEA worldwide schools are recognized as some of the best compared to public schools in the United States. DoDEA, as the parent organization for both the DoD K-12 overseas and domestic school systems, performs an oversight function for these systems not present when the ACDE was established. DoDEA fulfills the originally intended oversight responsibilities of ACDE and has moved beyond it with a formal collaborative relationship with the Department of Education (ED) and the Council of Chief State School Officers (CCSSO). Bothe ED and CCSSO provide guidance and support on DoDEA's educational programs and oversight responsibilities. There is no valid rationale for why DoDEA should still have a federal advisory committee providing recommendations on curriculum and other areas, especially when the recommendations are generally complimentary and have not impacted any changes with respect to the operation of these schools. In addition, the costs of operating the ACDE have more than doubled since 1994.

Budget Implications: This proposal would provide $1.60 million in cost savings by eliminating the annual operating costs of the ACDE. The resources reflected in the table below are funded with the FY 2017 President's Budget.

	RESOURCE REQUIREMENTS ($M)								
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
	$-0.26	$-0.26	$-0.27	$-0.27	$-0.27	$-0.27	Operation and Maintenance, Defense-Wide	04	4GTJ
Total	**$-0.26**	**$-0.26**	**$-0.27**	**$-0.27**	**$-0.27**	**$-0.27**			

Changes to Existing Law: This proposal would repeal section 1411 of the Defense Dependents' Education Act of 1978 (20 U.S.C. 929), as follows:

~~ADVISORY COUNCIL ON DEPENDENTS' EDUCATION~~

~~SEC. 1411. (a)(1) There is established in the Department of Defense an Advisory Council on Dependents' Education (hereinafter in this section referred to as the "Council"). The Council shall be composed of-~~

~~(A) the Secretary of Defense and the Secretary of Education, or their respective designees;~~

~~(B) 12 individuals appointed jointly by the Secretary of Defense and the Secretary of Education who shall be individuals who have demonstrated an interest in the field of primary or secondary education and who shall include representatives of professional employee organizations, school administrators, and parents of students enrolled in the defense dependents' education system and the domestic dependent elementary and secondary schools established under section 2164 of title 10, United States Code, and one student enrolled in either such system; and~~

~~(C) a representative of the Secretary of Defense and of the Secretary of Education.~~

~~(2) Individuals appointed to the Council from professional employee organizations shall be individuals designated by those organizations.~~

~~(3) The Secretary of Defense, or the Secretary's designee, and the Secretary of Education, or the Secretary's designee, shall serve as cochairmen of the Council.~~

~~(4) The Director shall be the Executive Secretary of the Council.~~

~~(b) The term of office of each member of the Council appointed under subsection (a)(2) shall be three years, except that-~~

~~(1) of the members first appointed under such paragraph, four shall serve for a term of one year, four shall serve for a term of two years, and four shall serve for a term of three years, as determined by the Secretary of Defense and the Secretary of Education at the time of their appointment, and~~

~~(2) any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.~~

~~No member appointed under subsection (a)(2) shall serve more than two full terms on the Council.~~

~~(c) The Council shall meet at least two times each year. The functions of the Council shall be to-~~

~~(1) recommend to the Director general policies for operation of the defense dependents' education system, and of the domestic dependent elementary and secondary school system established under section 2164 of title 10, United States Code, with respect to curriculum selection, administration, and operation of the system,~~

~~(2) provide information to the Director from other Federal agencies concerned with primary and secondary education with respect to education programs and practices which such agencies have found to be effective and which should be considered for inclusion in the defense dependents' education system and in the domestic dependent elementary and secondary school system,~~

~~(3) advise the Director on the design of the study and the selection of the contractor referred to in section~~ 1412~~(a)(2) of this title, and~~

~~(4) perform such other tasks as may be required by the Secretary of Defense.~~

~~(d) Members of the Council who are not in the regular full-time employ of the United States shall, while attending meetings or conferences of the Council or otherwise engaged in the business of the Council, be entitled to receive compensation at the daily equivalent of the rate specified at the time of such service for level IV of the Executive Schedule under section 5315 of title 5, United States Code, including traveltime, and while so serving on the business of the Council away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.~~

~~(e) The Council shall continue in existence until terminated by law.~~

Section 532 proposal would amend section 6(c) of the Defense Department Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 904(c)) to increase the amount of accrued educator leave that may be used for any purpose by one day each school year for school administrators, including instructional systems specialists and education research analysts, in the Department of Defense Dependents Schools. Currently, school administrators earn up to thirteen days of leave each school year. This educator leave may be used for a variety of purposes similar to sick leave use by General Schedule employees and in the event of a personal emergency. Only three of the thirteen days earned may be used for "any purpose." Such "any purpose" leave is similar to annual leave for General Schedule employees. This proposal would expand the any purpose leave from three to four days for school administrators. The proposal would not increase the number of days of leave earned each school year which would remain at thirteen. School administrators work a 222-day school year. Non-supervisory, school level educators work a 190-day school year. These non-supervisory educators earn ten days of leave each school year, three of which may be used for any purpose.

In recognition of the fact that school administrators work 32 additional duty days each school year, section 6(a) was amended in 1994 to allow them to earn not more than thirteen days of educator leave each school year, but the amount of that educator leave that could be used for any purpose remained at three days each school year. Based on the additional duty days required, this proposal would increase the amount of accrued educator leave available to be used for any purpose to four days each school year for school administrators.

Budgetary Implications: Because the amount of leave earned each school year would remain unchanged at thirteen days and it is not necessary to hire substitute educators to cover absences of school administrators, this proposal has no budget implications. Moreover, the proposal would not require modification of any existing human resources or payroll systems.

RESOURCE REQUIREMENTS ($M)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
DODEA	0	0	0	0	0	NA	NA	NA	NA
Total	0	0	0	0	0				

NUMBER OF PERSONNEL AFFECTED					
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**
DoDEA	326	326	326	326	326
Total	326	326	326	326	326

Changes to Existing Law: This proposal would make the following changes to section 6(c) of the Defense Department Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 904(c)):

Leave

Sec. 6. (a) Subject to the regulations prescribed and issued by the Secretary of Defense under section 902 of this title, each teacher (other than an individual employed as a substitute teacher) shall be entitled to cumulative leave, with pay, which shall accrue at the rate of one day for each calendar month, or part thereof, of a school year, except that if the school year includes more than eight months, any such teacher who shall have served for the entire school year shall be entitled to ten (or, if such teacher is employed in a supervisory position or higher, not less than ten and not more than thirteen) days of cumulative leave with pay.

* * * * *

(c) Subject to the regulations prescribed and issued by the Secretary of Defense, leave earned by any teacher under subsection (a) of this section may be used by such teacher:

(1) for maternity purposes,
(2) in the event of the illness of such teacher,
(3) in the event of illness, contagious disease, or death in the immediate family of such teacher, and
(4) in the event of any personal emergency.

If appropriate advance notice is given of the intended absence of a teacher, not to exceed three days <u>(or, if such teacher is employed in a supervisory position or higher, not to exceed four days)</u> of such leave may be granted for any purpose in each school year to such teacher.

Subtitle E—Other Matters

Section 541, currently subsection (c)(2) of 10 U.S.C. §1044d requires that a military legal assistance counsel be present for the execution of military testamentary instruments. In FY14 alone, the Navy executed 13,529 wills, requiring 10,146 hours of attorney time to act as presiding attorney. Currently, no state jurisdiction requires the presence of an attorney during a testamentary instrument execution. This process can be carried out by a state notary because the act of executing a testamentary instrument does not require specific legal knowledge. Allowing 10 U.S.C. §1044a notaries to execute military testamentary instruments will benefit military legal assistance offices because those offices will be able to reallocate attorneys to assist more clients and complete casework. This will alleviate a backflow of appointments at many military legal assistance offices.

Additionally, civilian paralegals working at military legal assistance offices must normally have a state notary license in order to notarize documents. Military departments often pay for the annual state license fees needed to maintain each notary's commission. Furthermore, when preparing legal documents for notarization, the military services must use different language depending on whether a 10 U.S.C. §1044a notary or a civilian state notary will be notarizing the document. This amendment would extend federal notary powers to those civilian paralegals working within military legal assistance offices. Such a change would cut the costs associated with renewing state notary licenses, and reduce the burden of preparing documents specifically tailored for the person performing the notarization. The proposed changes will provide greater uniformity and consistency in military legal assistance documents.

Budget Implications: The proposed change would save the DoD an estimated $600 on an annual basis.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Total	.0006	.0006	.0006	.0006	.0006	Operation and Maintenance, Navy	04	530	0901212N

Changes to Existing Law: This proposal would make the following changes to subsection (c) of section 1044d of title 10, United States Code:

(c) Requirements for Execution of Military Testamentary Instruments.—An instrument is valid as a military testamentary instrument only if—

(1) the instrument is executed by the testator (or, if the testator is unable to execute the instrument personally, the instrument is executed in the presence of, by the direction of, and on behalf of the testator);

~~(2) the instrument is executed in the presence of a military legal assistance counsel acting as presiding attorney;~~

(2) <u>the execution of the instrument is notarized by—</u>

<u>(A) a military legal assistance counsel;</u>

<u>(B) a person who is authorized to act as a notary under section 1044a of this title who—</u>

<u>(i) is not an attorney; and</u>

<u>(ii) is supervised by a military legal assistance counsel; or</u>

<u>(C) a State-licensed notary employed by a military department or the Coast Guard who is supervised by a military legal assistance counsel;</u>

(3) the instrument is executed in the presence of at least two disinterested witnesses (in addition to the ~~presiding attorney~~<u>person notarizing the instrument in accordance with paragraph (2)</u>), each of whom attests to witnessing the testator's execution of the instrument by signing it; and

(4) the instrument is executed in accordance with such additional requirements as may be provided in regulations prescribed under this section.

Changes to Existing Law: This proposal would also make the following changes to subsection (b) of section 1044a of title 10, United States Code:

(a) The persons named in subsection (b) have the general powers of a notary public and of a consul of the United States in the performance of all notarial acts to be executed by any of the following:

(1) Members of any of the armed forces.

(2) Other persons eligible for legal assistance under the provisions of section 1044 of this title [10 USCS § 1044] or regulations of the Department of Defense.

(3) Persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(4) Other persons subject to the Uniform Code of Military Justice (chapter 47 of this title [10 USCS §§ 801 et seq.]) outside the United States.

(b) Persons with the powers described in subsection (a) are the following:

(1) All judge advocates, including reserve judge advocates when not in a duty status.

(2) All civilian attorneys serving as legal assistance attorneys.

(3) All adjutants, assistant adjutants, and personnel adjutants, including reserve members when not in a duty status.

(4) All other members of the armed forces, including reserve members when not in a duty status, who are designated by regulations of the armed forces or by statute to have those powers.

(5) For the performance of notarial acts at locations outside the United States, all employees of a military department or the Coast Guard who are designated by regulations of the Secretary concerned or by statute to have those powers for exercise outside the United States.

<u>(6) All civilian paralegals serving at military legal assistance offices, supervised by a military legal assistance counsel (as defined in section 1044d(g) of this title).</u>

(c) No fee may be paid to or received by any person for the performance of a notarial act authorized in this section.

(d) The signature of any such person acting as notary, together with the title of that person's offices, is prima facie evidence that the signature is genuine, that the person holds the designated title, and that the person is authorized to perform a notarial act.

Section 542 would amend section 1056 of title 10, United States Code, to provide enhanced flexibility in the provision of relocation assistance to members of the Armed Forces and their families. It would provide the Services with the latitude to adapt the delivery of relocation assistance to meet the evolving needs of military Service members and their families in a time of fiscal constraint by leveraging technology to improve access, efficiency, and responsiveness of the relocation assistance program, especially in situations where military members are assigned overseas or away from a military installation with a relocation assistance program.

Specifically, subsection (a) would eliminate the requirement to provide for the establishment of military relocation assistance programs at each geographic location where at least 500 military members of the armed forces are serving. ” Instead, the Services would be given enhanced flexibility by requiring that they “ensure that members of the armed forces and their families are provided relocation assistance regardless of geographic location.” Accordingly, the Services will be able to provide relocation assistance in the most cost effective and efficient manner regardless of geographic location.

Additionally, subsection (b) and (c) would make conforming amendments to facilitate such flexibility and to update the proposal to reflect the established nature of the relocation assistance program.

Traditional face-to-face service delivery in all areas of family support has evolved to include increased access through virtual means. Without losing what has been accomplished under the Relocation Assistance Program, we must manage those requirements with recognition of fiscal constraints. Enhanced flexibility to provide relocation assistance by balancing traditional and technology based service delivery will allow the Services to build upon the success of the Relocation Assistance Program while also making it more effective, efficient, and responsive to the needs of service members and their families.

Budget Implications: This is a non-budgetary proposal, as no additional costs are associated with its enactment.

Changes to Existing Law: This proposal would make the following changes to section 1056 of title 10, United States Code:

§1056. Relocation assistance programs

(a) REQUIREMENT TO PROVIDE ASSISTANCE.—The Secretary of Defense shall carry out a program to provide relocation assistance to members of the armed forces and their families as provided in this section. In addition, the Secretary of Defense shall make every effort, consistent with readiness objectives, to stabilize and lengthen tours of duty to minimize the adverse effects of relocation.

(b) TYPES OF ASSISTANCE.—(1) The Secretary of each military department, under regulations prescribed by the Secretary of Defense, shall provide relocation assistance~~,~~ through military relocation assistance programs described in subsection (c), to members of the armed forces who are ordered to make a change of permanent station which includes a move to a new location (and for dependents of such members who are authorized to move in connection with the change of permanent station).

(2) The relocation assistance provided shall include the following:

(A) Provision of destination area information and preparation (to be provided before the change of permanent station takes effect), with emphasis on information with regard to

moving costs, housing costs and availability, child care, spouse employment opportunities, cultural adaptation, and community orientation.

(B) Provision of counseling about financial management, home buying and selling, renting, stress management aimed at intervention and prevention of abuse, property management, and shipment and storage of household goods (including motor vehicles and pets).

(C) Provision of settling-in services, with emphasis on available government living quarters, private housing, child care, spouse employment assistance information, cultural adaptation, and community orientation.

(D) Provision of home finding services, with emphasis on services for locating adequate, affordable temporary and permanent housing.

(c) MILITARY RELOCATION ASSISTANCE PROGRAMS.—(1) The Secretary shall provide for the establishment of military relocation assistance programs to provide the relocation assistance described in subsection (b). Such relocation assistance programs shall ensure that members of the armed forces and their families are provided relocation assistance regardless of geographic location. ~~The Secretary shall establish such a program in each geographic area in which at least 500 members of the armed forces are assigned to or serving at a military installation. A member who is not stationed within a geographic area that contains such a program shall be given access to such a program. The Secretary shall ensure that persons on the staff of each program are trained in the techniques and delivery of professional relocation assistance.~~

(2) The Secretary shall ensure that information available through ~~each military~~ a relocation assistance program shall be managed through a computerized information system-that can interact with ~~all other~~ the military relocation assistance programs of the military departments, including programs located outside the continental United States.

(3) ~~Duties of each military relocation assistance program shall include assisting~~ Assistance shall be provided to personnel offices on the military installation in using the computerized information available through the program to help provide members of the armed forces who are deciding whether to reenlist information on locations of possible future duty assignments.

(d) ~~Director~~ Program Manager.—The Secretary of Defense shall establish the position of Program Manager of ~~Director of~~ Military Relocation Assistance ~~Programs~~ in the office of the Assistant Secretary of Defense (~~Force Management and Personnel~~ Manpower and Reserve Affairs). The Program Manager ~~Director~~ shall oversee development and implementation of ~~the~~ military relocation assistance ~~programs~~ under this section.

(e) REGULATIONS.—This section shall be administered under regulations prescribed by the Secretary of Defense.

(f) INAPPLICABILITY TO COAST GUARD.—This section does not apply to the Coast Guard.

Section 543 would amend chapter 43 of title 38, United States Code, to improve the enforcement of reemployment rights under that chapter with respect to a State or private employer. That chapter is popularly known as the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Subsection (a) would strengthen enforcement of USERRA rights by allowing the United States to serve as a plaintiff in all suits filed by the Attorney General, as opposed to only suits filed against State employers. The amendment preserves the right of the aggrieved persons to intervene in such suits, or to bring their own suits where the Attorney General has declined to file suit. This section also strengthens enforcement by granting independent authority to the Attorney General to investigate and file suit to challenge a pattern or practice in violation of USERRA. The pattern or practice language is modeled after Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-6(a)).

Subsection (b) would explicitly abrogate sovereign immunity so that servicemembers can bring an action against a State employer in State court or Federal district court.

Subsection (c) would amend USERRA's venue provision to allow servicemembers to file actions against private employers in district courts with jurisdictional requirements that are similar to the general venue statute, 28 U.S.C. 1391(b).

Subsection (d) would add compensatory and punitive damages provisions that are similar to the damages provisions in title VII of the Civil Rights Act of 1964.

Subsection (e) would authorize either the United States or the aggrieved individual to serve as a plaintiff in all USERRA suits.

Subsection (f) would grant authority to the Attorney General to issue civil investigative demands in its USERRA investigations. The authority is similar to that provided under the False Claims Act (31 U.S.C. 3733), except that it does not include the authority to compel oral testimony or sworn answers to interrogatories.

Subsection (g) would revise the pension contribution calculations for servicemembers in service over one year so that the servicemember's pension contribution is comparable to a similarly situated employee.

Subsection (h) would modify USERRA to include disabilities discovered within five years after a servicemember resumes work for purposes of reemployment determinations.

Subsection (i) would clarify that the employer has the burden of identifying proper reemployment positions.

Section 544, Subsection (a) of this proposal, relating to Enforcement by the Attorney General, would amend subsection (f) of 10 U.S.C. 987, the so-called Military Lending Act (MLA), to include Attorney General enforcement authority for the MLA, with civil penalties and civil investigative demand authority.

Subsection (b) of the proposal, relating to consultation with the Department of Justice, would add the Department of Justice to the list of agencies (the banking regulators, FTC, and Treasury) with which the Secretary of Department must consult on a regular basis about regulations under the MLA.

Subsection (c) of the proposal, relating to U.S.C. cross references, would add a U.S.C. citation for the Servicemembers Civil Relief Act in MLA subsection (e)(2) and update a USC citation to that Act in MLA subsection (g).

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Pay and Allowances

Section 601 would allow service members and retired members ("member" or "members") to designate an individual by durable power of attorney to receive pay and allowances during a time when the member is mentally incapacitated.

Existing law and regulation allows the Secretary, or a court of competent jurisdiction, to designate who should receive a mentally incapacitated member's pay. Section 602 of title 37, United States Code, authorizes the Secretary concerned to designate a person to receive active duty pay and allowances, or retired pay, on behalf of the mentally incapacitated member. In the absence of a legal committee, guardian, or other court-appointed representative, the Secretary may, under section 602, transfer pay of an incapacitated member to a Secretary-designated person. Defense Finance and Accounting Services ("DFAS") can only disperse an incapacitated member's pay to a Secretary appointed trustee or to a court-appointed committee, guardian, or other representative. This Secretary-level authority to appoint a trustee has been delegated to Director, DFAS-CL. The Director, DFAS-CL, determines the appropriate trustee for the incapacitated member, not the member.

Neither statute nor applicable regulation considers the desires of the member in the appointment of a trustee. In both instances, members have no say in who should receive their pay upon their mental incapacitation. However, both the statute and regulation require the appointed trustee to post a bond and to make annual accounting reports. These requirements are an added burden for those appointed to mind the member's finances during incapacitation. In contrast, a person whom the member designates by a durable power of attorney does not have to post bond or make annual accounting reports.

A durable power of attorney is an effective estate planning tool that specifically enacts the member's desires before incapacitation. Many people, when arranging their estates, specifically designate a trusted family member or confidant to serve as their attorney in the event of their incapacitation. In fact, durable powers of attorney are routinely used to authorize trusted persons to make medical decisions on behalf of incapacitated individuals. Thus, individuals who execute durable powers of attorney have the peace of mind that their trusted agent will look after their affairs, not someone appointed by a court or an impersonal administrative body. This

proposal is necessary to enable members to responsibly and proactively plan their personal affairs in the event of their incapacitation.

Budget Implications: There are no resource requirements or proposed offset associated with this proposal.

Changes to Existing Law: This proposal would make the following changes to section 602 of title 37 United States Code:

§ 602. Payments: designation of person to receive amounts due.

(a) Active duty pay and allowances, amounts due for accrued or accumulated leave, or retired or retainer pay, that are otherwise payable to a member to whom this chapter applies and who, in the opinion of the board of medical officers or physicians, is mentally incapable or managing his affairs, may be paid for that member's use or benefit to any person designated by the Secretary concerned, or by any officer to whom he delegates his authority under this section, without the appointment in judicial proceedings of a committee, guardian, or other legal representative.

(b) The board shall consist of at least three qualified medical officers or physicians, one of whom is specially qualified in the treatment of mental disorders, appointed from available medical officers or physicians under his jurisdiction by the head of whichever of the following is providing medical treatment for the member, or by a person designated by that head—

(1) Department of the Army;
(2) Department of the Navy;
(3) Department of the Air Force;
(4) Department of Health and Human Services; or
(5) Department of Veterans Affairs.

If the hospitalization or medical care of the member is not provided by the United States, the board shall be appointed by the Secretary of the department having jurisdiction of the member.

(c) A payment made to a person who is designated under this section discharges the obligation of the United States as to the amount paid.

(d) A person serving in a legal, medical, fiduciary, or other capacity, may not demand or accept a fee, commission, or other charge for any service performed under this chapter.

(e) This section does not apply in any case in which a legal committee, guardian, or other representative has been appointed by a court of competent jurisdiction, <u>or the member has granted authority to an individual to manage these funds pursuant to a valid and legally executed durable power of attorney,</u> except as to payments made before the paying agency of the department concerned receives notice of that appointment.

(f) A person who is designated to receive payments under this section shall furnish satisfactory assurance that the amounts received by him will be applied to the use and benefit of the incompetent member, and, where the payments may reasonably be expected to be more than $1,000, shall provide a suitable bond to be paid for out of amounts due the incompetent member.

Subtitle B—Bonuses and Special Incentive Pays

Section 611 is a conforming amendment to correct an inequity that will exist when the Department transitions to a general bonus authority on October 1, 2017. Currently the Services use the authority under section 308j of title 37, United States Code, to recruit and retain officers within their Reserve Components. The National Defense Authorization Act for Fiscal Year 2013 increased the maximum bonus amount under section 308j from $12,000 to $20,000. Section 308j sunsets on September 30, 2017, and is replaced by section 332, which contains the previous bonus limit of $12,000. This amendment will increase the new bonus authority to $20,000 to match the current bonus level. Maintaining the current bonus level will enable the Services to retain the ability to recruit and retain officers.

Budget Implications: This conforming amendment will not have a budget implication because the proposal will increase the bonus amount in the new section of law (section 332) to match the bonus amount it is replacing in the terminating section of law (section 308j). The Services currently POM for up to the $20,000 amount via section 308j. The budget table below shows the POM plan for the affiliation bonus for officers in the Selected Reserve under section 308j for up to the $20,000 amount. When section 332 is increased to the $20,000 amount, the POM plan will not change. The resources reflected in the table below are funded within the FY 2017 President's Budget.

NUMBER OF PERSONNEL AFFECTED					
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**
USAFR	91	91	91	91	91
ANG	30	217	400	400	400
USAR	130	130	130	130	130
ARNG	148	148	148	148	148
Total	399	586	769	769	769

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
USAFR	.9	.9	.9	.9	.9	Reserve Personnel, Air Force,	01	090	
ANG	.4	4.2	8.0	8.0	8.0	National Guard Personnel, Air Force,	01	090	
Army Reserve	2.6	2.6	2.6	2.6	2.6	Reserve Personnel, Army	01	090	0508991A
Army National Guard	2.14	2.14	2.14	2.14	2.14	National Guard Personnel, Army	01	090	0904901A
Navy does not intend to use this authority, which would have been funded in the following account:									

Reserve Personnel, Navy.									
Marine Corps does not intend to use this authority, which would have been funded in the following account: Reserve Personnel, Marine Corps.									
Total	6.04	9.84	13.64	13.64	13.64				

Changes to Existing Law: This proposal would make the following change to section 332 of title 37, United States Code:

§ 332. General bonus authority for officers

* * * * *

(c) Maximum Amount and Method of Payment.-

(1) Maximum amount.-The Secretary concerned shall determine the amount of a bonus to be paid under this section, except that-

(A) a bonus paid under paragraph (1) of subsection (a) may not exceed $60,000 for a minimum three-year period of obligated service agreed to under subsection (d);

(B) a bonus paid under paragraph (2) of subsection (a) may not exceed ~~$12,000~~ $20,000 for a minimum three-year period of obligated service agreed to under subsection (d);

(C) a bonus paid under paragraph (3) of subsection (a) may not exceed $50,000 for each year of obligated service in a regular component agreed to under subsection (d);

(D) a bonus paid under paragraph (3) of subsection (a) may not exceed $12,000 for each year of obligated service in a reserve component agreed to under subsection (d); and

(E) a bonus paid under paragraph (4) or (5) of subsection (a) may not exceed $10,000.

(2) Lump sum or installments.-A bonus under this section may be paid in a lump sum or in periodic installments, as determined by the Secretary concerned.

(3) Fixing bonus amount.-Upon acceptance by the Secretary concerned of the written agreement required by subsection (d), the total amount of the bonus to be paid under the agreement shall be fixed.

* * * * *

Subtitle C—Retired Pay

The Fiscal Year 2016 National Defense Authorization Act (Public Law 114-92) enacted substantial changes to the military retirement system. The existing military retirement system consists entirely of a defined retired pay benefit, and the member's retired pay is based upon a formula of 2.5 percent times the number of years served times the average of the member's highest 36 months of basic pay. The new retirement system ("enacted military retirement system") is a blend of several components, which includes a defined retired pay benefit using 2.0 percent in lieu of 2.5 percent, provides an automatic 1 percent government contribution to the member's account with the Thrift Savings Plan after the member serves 60 days, provides government matching contributions to the member's Thrift Savings Plan account using the same

matching plan as is used for government civilians under the Federal Employee Retirement System, and provides a bonus (continuation pay) paid to the member at the 12th year of service. Members who join after January 1, 2018, and those who have less than 12 years of service on January 1, 2018, who elect to opt-in will be covered by the blended retirement system. Currently serving members who have more than 12 years of service and those with less than 12 years of service on January 1, 2018 that do not elect to opt-in will remain grandfathered under the current retirement system.

At the time of enactment of the Fiscal Year 2016 National Defense Authorization Act, it was recognized that some changes to the blended retirement system, as enacted, might be necessary or desirable. To allow time for the Department to identify and propose these changes, as well as to have ample opportunity to train and prepare the Force, Congress elected to defer implementation of the blended retirement system until January 1, 2018. This proposal contains the changes to the blended retirement system the Department has determined are necessary and desirable.

Most important to the Department and the primary impetus for submitting this proposal is the Department's strong desire to have continuation pay flexibility. In order to maximize the efficiency and effectiveness of the continuation pay as a retention incentive, the military services require additional flexibility in when, and how much, to pay than what is provided for in the statue as enacted. Retention behavior can vary significantly among career fields and across the various Services. In some career specialties, significant incentives may be required to sustain retention; in others, no incentive may be necessary. As a result, the Services need flexibility to establish eligibility for this incentive at an earlier or later point than called for by the statute, as well as the authority to vary the incentive bonus amount—including the authority to not offer the incentive at all, or to pay a lesser amount than the required minimum. Continuation pay flexibility is the Department's top priority for this proposal.

Section 621. Another priority for the Department is to simplify the requirement to automatically reenroll members annually in January, should they disenroll at any point during the preceding year. Members are currently allowed to contribute to the Thrift Savings Plan but are not required to contribute as part of military retirement. In the enacted retirement system, to encourage members to contribute to the Thrift Savings Plan, members are automatically enrolled in the Thrift Savings Plan and receive government automatic and matching contributions as part of military retirement. Currently, approximately 42 percent of all members contribute to the Thrift Savings Plan without any governmental incentive or matching contributions. Members, however, are not required to contribute to the Thrift Savings Plan and may disenroll at any time. To encourage members to continue saving for retirement, the enacted military retirement system contains a provision that, if a member chose to disenroll, would automatically reenroll the member in January of the following year. This proposed section would eliminate the automatic reenrollment.

Section 622. The enacted military retirement system would vest all government contributions to the member's Thrift Savings Plan account upon the completion of the member's second year of service. The DoD proposal would delay the start of government matching contributions from the date the member completed two years of service until the date the

member completed four years of service. This change would have the effect of incentivizing a member to complete the first term of enlistment and to embark upon a second enlistment.

Section 623. The enacted military retirement system in section 632(c)(2) added an additional definition of "separation from government service." The Federal Retirement Thrift Investment Board (FRTIB), which oversees and administers the Thrift Savings Plan, has identified conflicts between the enacted definition in 632(c)(2) and the existing definition in 37 USC §211(c). In attempting to resolve these conflicts, the DoD and the FRTIB believe the existing definition in 37 USC §211(c) appropriately addresses cases of separation and/or resumption of service and applies to the entire federal government workforce, whereas section 632(c)(2) would only apply to military members. In consultation, the DoD and FRTIB recommend the definition in section 632(c)(2) added in the enacted military retirement system be repealed to alleviation confusion and the significant communication and administrative difficulties that would result from separate definitions.

Section 624. Another priority for the Department is to change the default account for the member's contributions from a Traditional Thrift Savings Plan account to a ROTH account. The enacted military retirement system automatically enrolls a military member into the Thrift Savings Plan and specifies the member's default contribution rate at three percent. The member's contributions are then directed into a Traditional Thrift Savings Plan account. The DoD agrees with the automatic enrollment into the Thrift Savings Plan but believes the member is better served by having the member contributions directed into a Roth Thrift Savings Plan account. This section proposes amending the requirement for a member's contributions to be directed to a Traditional account and instead directs the contributions to a Roth account. In a Traditional account, the member deposits pre-tax contributions. These contributions and earnings grow tax deferred. The member will pay income tax on the contributions and earnings when they are withdrawn in retirement. In a Roth account, the member deposits post-tax contributions. The contributions and earnings grow, but upon retirement, the contributions and earnings are not subject to income tax. Because junior military members are in low tax brackets due to their lower taxable earnings, and in some cases pay zero income tax, having the member contributions automatically directed to a Roth account is more advantageous to the member.

Section 625. The enacted military retirement system provides members with automatic government contributions to a Thrift Savings Plan account of one percent beginning upon entry. When the member completes two years of service, the enacted military retirement system provides the member with matching contributions. For every one percent (up to three percent) of the member's contributions, the government provides a one percent matching contribution. If the member chooses to contribute four percent or five percent of basic pay, the government will provide additional matching contributions of an additional ½ percent for the fourth and fifth percent. As a result, a member who contributes zero to the Thrift Savings Plan would receive only the 1 percent automatic government contribution. A member who chooses to contribute three percent would receive the one percent automatic government contribution plus the government matching contribution of three percent (total of 4 percent). A member who chooses to contribute five percent would receive the government automatic contribution of 1 percent plus an additional four percent government matching contributions (3 percent + ½ percent + ½ percent) (total of 5 percent, including the 1 percent automatic contribution).

The DoD proposal would modify the rate for the government matching contributions by changing the government match for the fourth and fifth percent the member contributes from ½ percent each to a full one percent each. As a result, under the proposal, a member who chooses to contribute five percent would receive the one percent automatic government contribution plus an additional five percent in government matching contributions (total of 6 percent).

Section 626. The enacted military retirement system ceases providing government matching contributions into a members Thrift Savings Plan account when the member reaches 26 years of service. This has the effect of providing a disincentive for staying in the military for the most experienced and capable members. The proposal would repeal the requirement to cease providing government matching contributions at 26 years of service and, instead, continue providing government matching contributions until the member's retirement.

Section 627. Members with fewer than twelve years of service who serve between January 1, 2018 and December 31, 2018 have an opportunity to opt-into the enacted military retirement system. In some cases, however, there are members who are not able to make an election during this period, such as a member who is deployed for the entire year or a member who has a break in service and returns after December 31, 2018. The enacted retirement system creates additional flexibilities to afford these members an additional, limited opportunity to elect to opt-in to the new system. The DoD proposal recognizes that the enacted retirement system did not take into account cadets or midshipmen. In prior changes to the military retirement system, cadets and midshipmen were specifically addressed. The DoD proposal would provide cadets and midshipmen who were serving during calendar year 2018 the opportunity to opt-in to the enacted retirement system or to remain under the current retirement system. The DoD proposal similarly addresses reservists who were inactive during calendar year 2018 and subsequently transfer to an active status or onto active duty. In the situation of both the cadets / midshipmen and the inactive reservists, the proposal affords them a limited opportunity to choose to opt-in to the enacted retirement system.

Section 628. For a retired member who receives disability compensation from the Department of Veterans Administration and military retired pay from the DoD, if the disability is rated at less than 50 percent, the military retired pay is reduced by the amount of disability compensation. Combat-Related Special Compensation (CRSC) restores military retired pay for that portion of the disability that was determined to be combat related up to the amount of retired pay that would have been received under based upon years of service. Because the enacted military retirement system reduces the multiplier from 2.5 percent to 2.0 percent for the years of service formula to calculate retired pay, to be consistent, the multiplier to calculate the amount of retired pay to be restored by CRSC should also be reduced from 2.5 percent to 2.0 percent.

Section 629. **<u>DoD top priority.</u>** The enacted military retirement system pays a member 2.5 months of basic pay (continuation pay) when the member reaches twelve years of service in exchange for an agreement to continue serving for an additional four years. The intent of continuation pay is to allow the DoD the additional flexibility to address retention deficiencies that result from the reduction in the retired pay multiplier from 2.5 percent to 2.0 percent. The DoD recognizes that retention rates may vary considerably between career fields and across

Services. As a result, the DoD is concerned that mandating a 2.5 month continuation pay for all members may not be the most efficient or effective solution. Mandating a minimum continuation pay may have the effect of encouraging retention when it is not needed, such as in over strength career fields or in times of downsizing. The DoD proposal requests the flexibility to pay the continuation pay at any point between the time the member completes eight years of service and before the member reaches 16 years of service in exchange for an agreement to continue serving for a period of not less than three additional years. Similarly, the DoD proposal requests the flexibility to pay continuation pay as appropriate using a range between zero months of basic pay up to 13 months of basic pay for an active duty member or zero months of basic pay up to six months of basic pay for a reserve component member. In addition, the DoD proposal requests Congress correct an inequity and consider members of a reserve component performing active Guard and Reserve duty in the same manner as their active duty counterparts for purposes of calculating continuation pay.

Section 630. The DoD proposes the amendments contained in this proposal take effect on the same date as the enacted retirement system becomes effective, January 1, 2018.

Budget Implications:

($M/Appropriation)	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**
MilPers, Army	$ 116	$ (102)	$ (218)	$ (244)	$ (227)
MilPers, Navy	$ 78	$ (52)	$ (77)	$ (114)	$ (155)
MilPers, Marine Corps	$ 38	$ (12)	$ (13)	$ (32)	$ (47)
MilPers, Air Force	$ 82	$ (137)	$ (137)	$ (155)	$ (202)
sub-total AC	**$ 315**	**$ (303)**	**$ (445)**	**$ (546)**	**$ (632)**
Res Pers, Army	$ 19	$ (6)	$ (18)	$ (23)	$ (23)
Res Pers, Navy	$ 7	$ (4)	$ (7)	$ (13)	$ (18)
Res Pers, Marine Corps	$ 3	$ 0	$ 0	$ (2)	$ (4)
Res Pers, Air Force	$ 7	$ (5)	$ (5)	$ (7)	$ (10)
Natl Gd, Army	$ 32	$ (10)	$ (29)	$ (39)	$ (39)
Natl Gd, Air Force	$ 13	$ (13)	$ (13)	$ (16)	$ (22)
sub-total RC	**$ 80**	**$ (38)**	**$ (73)**	**$ (100)**	**$ (115)**

AC + RC (rounded $M)	**$ 395**	**$ (342)**	**$ (517)**	**$ (646)**	**$ (747)**

Changes to Existing Law: This subtitle would make the following changes in provisions of existing law:

CHANGES TO EXISTING LAW

SEC. 621

This proposal makes the following changes to section 8432(b)(2)(F) of title 5, United States Code:

§. 8432. Contributions

~~(F) Notwithstanding any other provision of this paragraph, if a full TSP member (as defined in section 8440e(a)) has declined automatic enrollment into the Thrift Savings Plan for a year, the full TSP member shall be automatically reenrolled on January 1 of the succeeding year, with contributions under subsection (a) at the default percentage of basic pay.~~

SEC. 622

This proposal makes the following changes to section 8440e(e)(3)(B)(i)(I) of title 5, United States Code:

§ 8440e. Members of the uniformed services

(i) begins—

(I) on or after the day that is ~~2 years~~ 4 years and 1 day after the date the member first enters a uniformed service, in the case of a member described in paragraph (1)(A); or

---

SEC. 623

This proposal makes the following changes to section 8432(g)(6) of title 5, United States Code:

§ 8432. Contributions

~~(6) For purposes of this subsection, a member of the uniformed services shall be considered to have separated from Government employment if the member is discharged or released from service in the uniformed services.~~

———————

SEC. 624

This proposal makes the following changes to section 8438(c)(2), of title 5, United States Code:

. § 8438. Investment of Thrift Savings Fund

(2) ~~If an~~ (A) Consistent with the requirements of subparagraph (B), if an election has not been made with respect to any sums available for investment in the Thrift Savings Fund, the Executive Director shall invest such sums in an age-appropriate target date asset allocation investment fund, as determined by the Executive Director. Such investment fund shall consist of any of the funds described in subsection (b).

(B) Contributions made by a full TSP member (as defined in section 8440e(a) of this title) in accordance with section 8432 of this title shall be designated Roth contributions until the full TSP member elects not to designate such contributions as Roth contributions.

————

SEC. 625

This proposal makes the following changes to section 8440e(e)(2) of title 5, United States Code:

§ 8440e. Members of the uniformed services

(2) MAXIMUM AMOUNT.—The amount contributed under this subsection by the Secretary concerned for the benefit of a full TSP member for any pay period shall not be more than ~~5 percent~~ 6 percent of the member's basic pay for such pay period. Any such contribution under this subsection, though in accordance with section 8432 as provided in paragraph (1), is instead of, and not in addition to, amounts contributable under section 8432 as provided in section 8432(c).

* * * * * * *

This proposal makes the following changes to section 8438(c)(2), of title 5, United States Code:

§ 8432. Contributions

(D) Notwithstanding subparagraph (B), the amount contributed under subparagraph (A) by an employing agency with respect to a contribution of a full TSP member (as defined in section 8440e(a) of this title) during any pay period shall be the amount equal to such portion of the total amount of the member's contribution as does not exceed 5 percent of such member's basic pay for such period.

————

SEC. 626

This proposal makes the following changes to section 8440e(e)(3) of title 5, United States Code:

§ 8440e. Members of the uniformed services

(3) TIMING AND DURATION OF CONTRIBUTIONS.—

(A) AUTOMATIC CONTRIBUTIONS.—The Secretary concerned shall make a contribution described in section 8432(c)(1) under this subsection for the benefit of a member described in paragraph (1) for any ~~pay period during the period that—~~ pay period that begins—

~~(i) begins—~~

~~(I)~~ (i) on or after the day that is 60 days after the date the member first enters a uniformed service, in the case of a member described in paragraph (1)(A); or

~~(II)~~ (ii) on or after the date the member makes the election described in paragraph (1)(B), in the case of a member making such an election~~; and~~.

~~(ii) ends on the day such member completes 26 years of service as a member of the uniformed services.~~

(B) MATCHING CONTRIBUTIONS.—The Secretary concerned shall make a contribution described in section 8432(c)(2) under this subsection for the benefit of a member described in paragraph (1) for any ~~pay period during the period that—~~ pay period that begins—

~~(i) begins—~~

(i) on or after the day that is 2 years and 1 day after the date the member first enters a uniformed service, in the case of a member described in paragraph (1)(A); or

(ii) on or after the date the member makes the election described in paragraph (1)(B), in the case of a member making such an election~~; and~~.

~~(ii) ends on the day such member completes 26 years of service as a member of the uniformed services.~~

SEC. 627

This proposal makes the following changes to section 1409(b)(4)(C) of title 10, United States Code:

§ 1409. Retired pay multiplier

(C) ELECTION PERIOD.—

(i) IN GENERAL.—Except as provided in clauses (ii) ~~and (iii)~~ (iii), (iv) and (v), a member of a uniformed service described in subparagraph (B) may make the election authorized by that subparagraph

only during the period that begins on January 1, 2018, and ends on December 31, 2018.

(ii) HARDSHIP EXTENSION.—The Secretary concerned may extend the election period described in clause (i) for a member who experiences a hardship as determined by the Secretary concerned.

(iii) EFFECT OF BREAK IN SERVICE.—A member of a uniformed service who returns to service after a break in service that occurs during the election period specified in clause (i) shall make the election described in subparagraph (B) within 30 days after the date of the reentry into service of the member.

(iv) CADETS AND MIDSHIPMEN, ETC.—A member of a uniformed service who serves as a cadet, midshipman, or member of the Senior Reserve Officers' Training Corps during the election period specified in clause (i) shall make the election described in subparagraph (B)—

(I) on or after the date on which such cadet, midshipman, or member of the Senior Reserve Officers' Training Corps is appointed as a commissioned officer or otherwise begins to receive basic pay; and

(II) not later than 30 days after such date or the end of such election period, whichever is later.

(v) INACTIVE RESERVISTS.—A member of a reserve component who is not in an active status during the election period specified in clause (i) shall make the election described in subparagraph (B)—

(I) on or after the date on which such member is transferred from an inactive status to an active status or active duty; and

(II) not later than 30 days after such date or the end of such election period, whichever is later.

SEC. 628

This proposal makes the following changes to section 1413a(b)(3)(B) of title 10, United States Code:

§ 1413a. Combat-related special compensation

(B) SPECIAL RULE FOR RETIREES WITH FEWER THAN 20 YEARS OF SERVICE.—In the case of an eligible combat-related disabled uniformed services retiree who is retired under chapter 61 of this title with fewer than 20 years of creditable service, the amount of the payment under paragraph (1) for any month may not, when combined with the amount of retired pay payable to the retiree after any such reduction under sections 5304 and 5305 of title 38, cause the total of such combined payment to exceed the amount equal to ~~2½ percent of the member's years of creditable service~~ the retired pay multiplier determined for the member under section 1409 of this title multiplied by the member's retired pay

base under section 1406(b)(1) or 1407 of this title, whichever is applicable to the member.

SEC. 629

This proposal makes the following changes to section 356 of title 37, United States Code:

§ 356. Continuation pay: full tsp members with ~~12 years~~ not less than 8 and not more than 16 years of service

(a) CONTINUATION PAY.—The Secretary concerned ~~shall~~ may make a payment of continuation pay to each full TSP member (as defined in section 8440e(a) of title 5) of the uniformed services under the jurisdiction of the Secretary who—

~~(1) completes 12 years of service; and~~

(1) has completed not less than 8 and not more than 16 years of service in a uniformed service; and

(2) enters into an agreement with the Secretary to serve for ~~an additional 4 years~~ not less than 3 additional years of obligated service.

~~(b) AMOUNT.—The amount of continuation pay payable to a full TSP member under subsection (a) shall be the amount that is equal to—~~

~~(1) in the case of a member of a regular component—~~

~~(A) the monthly basic pay of the member at 12 years of service multiplied by 2.5; plus~~

~~(B) at the discretion of the Secretary concerned, the monthly basic pay of the member at 12 years of service~~

~~multiplied by such number of months (not to exceed 13 months) as the Secretary concerned shall specify in the agreement of the member under subsection (a); and~~

~~(2) in the case of a member of a reserve component—~~

~~(A) the amount of monthly basic pay to which the member would be entitled at 12 years of service if the member were a member of a regular component multiplied by 0.5; plus~~

~~(B) at the discretion of the Secretary concerned, the amount of monthly basic pay described in subparagraph (A) multiplied by such number of months (not to exceed 6 months) as the Secretary concerned shall specify in the agreement of the member under subsection (a).~~

(b) PAYMENT AMOUNT.—The Secretary concerned shall determine the payment amount under this section as a multiple of a full TSP member's monthly basic pay. The maximum amount the Secretary concerned may pay the member under this section is—

(1) in the case of a member who, at the time the agreement under subsection (a)(2) is entered into, is serving on active duty (including service on Active Guard and Reserve duty, participation in the Full Time Support Program, and service on full-time National Guard duty), 13 times the amount of the monthly basic pay payable to the member for the month during which the agreement is entered into; and

(2) in the case of any member not covered by paragraph (1), 6 times the amount of monthly basic pay to which the member would be entitled for the month during which the agreement under subsection (a)(2) is entered into if the member were serving on active duty at the time the agreement is entered into.

(c) ADDITIONAL DISCRETIONARY AUTHORITY.—In addition to the continuation pay ~~**required**~~ **that may be paid** under subsection (a), the Secretary concerned may provide continuation pay under this subsection to a full TSP member described in subsection (a), and subject to the service agreement referred to in paragraph (2) of such subsection, in an amount determined by the Secretary concerned.

~~(d) TIMING OF PAYMENT.—The Secretary concerned shall pay continuation pay under subsection (a) to a full TSP member when the member completes 12 years of service. If the Secretary concerned also provides continuation pay under subsection (c) to the member, that continuation pay shall be provided when the member completes 12 years of service.~~

(d) TIMING OF PAYMENT.—The Secretary concerned shall pay continuation pay under subsection (a) to a full TSP member when the member has completed not less than 8 and not more than 16 years of service in a uniformed service.

(e) LUMP SUM OR INSTALLMENTS.—A full TSP member may elect to receive continuation pay provided under subsection (a) or (c) in a lump sum or in a series of not more than four payments.

(f) RELATIONSHIP TO OTHER PAY AND ALLOWANCES.—Continuation pay under this section is in addition to any other pay or allowance to which the full TSP member is entitled.

(g) REPAYMENT.—A full TSP member who receives continuation pay under this section (a) and fails to complete the obligated service required under such subsection shall be subject to the repayment provisions of section 373 of this title.

(h) REGULATIONS.—Each Secretary concerned shall prescribe regulations to carry out this section.

TITLE VII—HEALTHCARE PROVISIONS

Subtitle A—TRICARE and other Health Care Benefits

Section 701 proposes improved TRICARE health plan choices. It starts with reform of the health care enrollment system to provide a coherent set of health plan choices for active duty and retired members and their families. The choices are: (1) TRICARE Select (a managed care option; (2) TRICARE Choice (a self-managed option); (3) TRICARE-for-Life plan; and (4) TRICARE Second Payer plan. Each plan will have an open season enrollment opportunity and a reasonable enrollment fee. The TRICARE Select Option is similar to the current TRICARE

Prime. It will be offered in areas in which a military medical treatment facility (MTF) is located to provide reduced cost-sharing amounts for enrolled beneficiaries whose care is provided by or managed by a designated primary care manager and network providers. Active duty family members are eligible to enroll. Enrollment in this option will also be offered to retirees and their family members in areas where an MTF has a significant number of uniformed health care providers, including specialty providers, and sufficient capability to support efficient operation. Consistent with current policy concerning TRICARE Prime, TRICARE-for-Life, TRICARE Reserve Select, TRICARE Retired Reserve, and Continued Health Care Benefits Program beneficiaries are not eligible to enroll in TRICARE Select. A TRICARE Select Option enrollee will be required to obtain care or a referral for care from a designated primary care manager prior to obtaining care under the TRICARE program.

The TRICARE Choice Option will be established in all areas. In this option, eligible beneficiaries – active duty family members and retirees and their family members – will generally not have restrictions on their freedom of choice of health care providers. This option is similar to the current TRICARE Extra plan, except that for care received in the provider network there is no deductible and copayments will be in fixed dollar amounts, rather than a percentage of the allowable cost. Cost sharing amounts for calendar year 2018 (the first year of implementation) under both options are set forth in a single table included in the proposed text of the provision. In subsequent years, the fixed dollar amounts in the table will be annually indexed by the National Health Expenditures per capita rate.

There are some special rules regarding this proposal and its cost sharing requirements. First, there are no cost-sharing requirements for active duty members. Second, cost sharing for TRICARE-for-Life beneficiaries for services that are covered by both Medicare and TRICARE is not covered in the table referred to above, except that the catastrophic cap does apply. Third, the Extended Health Care Options (ECHO) program is unaffected by this proposal. Fourth, this proposal does not change the structure for the current TRICARE premium-based programs – TRICARE Reserve Select, TRICARE Retired Reserve, the TRICARE dental program, or the Continued Health Care Benefits Program. Fifth, required copayments for services under the Pharmacy Benefits Program are unaffected by this proposal, but the enrollment fee, deductible, and catastrophic cap under this section apply to the Pharmacy Benefits Program. Sixth, similar to the current Prime Remote Program, cost sharing requirements for a remote area dependents are those established under the TRICARE Select Option but without a referral requirement. And seventh, retirees and their family members (other than those who are Medicare eligible) who have other health insurance may enroll in the TRICARE Second Payer Option with an enrollment fee of one-half of that for the TRICARE Choice Option. Under this option, TRICARE will pay the standard deductible and copayment amounts under the beneficiary's primary plan, not to exceed the amount TRICARE would have paid as primary payer to a non-network provider.

The Secretary of Defense would be required to issue regulations addressing several important requirements for the operation of the TRICARE Select and TRICARE Choice options. One such requirement would be access to health care standards at least comparable to those of leading health care systems in the United States, and reinforced by allowing beneficiaries to obtain care from non-network providers with no extra point-of-service fee if

timely care cannot be provided within the network. Secondly, the TRICARE Select Option would make special provisions to ensure appropriate access to urgent care services. Initially, the details of this would be based on the results of the pilot project required by section 725 of the National Defense Authorization Act for Fiscal Year 2016. Third, DoD would publish and update quarterly on a publically available Internet website of the all appropriate data on patient safety, quality of care, patient satisfaction, and health outcomes metrics, including appropriate data at the level of each military medical treatment facility. The published measures shall be updated no less frequently than quarterly. Fourth, DoD would ensure that the enrollment status is portable between or among TRICARE program regions of the United States and that beneficiaries who relocate will be able to obtain a new primary care physician within ten days. Fifth, DoD would be required to implement value-based incentives to promote improvement in the quality of care, the experience or care, the health of beneficiaries, and the cost-effectiveness of the TRICARE program. Sixth, DoD would provide an annual open season enrollment period and opportunities during other periods for enrollment modifications. And finally, the regulations could include other appropriate provisions for the effective and efficient administration of the TRICARE program.

This proposal also includes a shift in the enrollment year from a fiscal year basis to a calendar year basis to align with most other health plans in the United States. A set of rules is provided for the three-month transition period to make this change. The draft provision also makes a number of conforming amendments to existing law.

Under this proposal the overall cost sharing impact on beneficiaries is as set forth in the following table.

Cost-Sharing Impact on Beneficiary Families (CY 2018)

		Current TRICARE Triple Option	Proposed TRICARE Health Plan
Active Duty Family [a] (3 members not including service member)	DoD cost	$ 13,776	$ 13,744
	Family cost	$ 189	$ 219
	Total	$ 13,965	$ 13,963
	% borne by family	1.4%	1.6%
Non-Medicare eligible Retiree Family [b] (3 members, all under age 65)	DoD cost	$ 15,623	$ 15,042
	Family cost	$ 1,360	$ 1,768
	Total	$ 16,982	$ 16,809
	% borne by family	8.0%	10.5%

Note 1. The analysis assumes an average mix of MTF and civilian care within each beneficiary category, and a weighted average of Prime and Non-Prime users for the current TRICARE triple option (or former Prime and Non-

Prime users), for the proposed TRICARE health plan. For those using all civilian care, the percent borne by the family is slightly higher.

Note 2. The annual employer health benefits survey published by Kaiser Family Foundation (KFF)/Health Research & Educational Trust (HRET) offers a useful benchmark for comparison (http://kff.org/health-costs/).

a. Active duty family cost-sharing structure also applies to transitional survivors, TRICARE Young Adult beneficiaries with an active duty sponsor, the Transitional Assistance Management Program, and TRICARE Reserve Select.

b. Retiree cost-sharing structure also applies to survivors, TRICARE Young Adult beneficiaries with a retired sponsor, and TRICARE Retired Reserve.

Budget Implications: This section would reduce Defense Health Program requirements by $3.5 billion from FY 2017 – FY 2021. However, due to the necessary administrative, contracting, and other changes required within the Military Health System and the January 1, 2018, implementation date, there is an estimated up-front cost of $57 million for the Defense Health Program in FY 2017.

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Defense Health	57	-473	-931	-1,036	-1,150	Operation and Maintenance, Defense Health Program	01	02

Changes to Existing Law: This proposal would make the following changes to chapter 55 of title 10, United States Code, and other laws as shown below (matter to be inserted in shown in ***boldface italic type***; matter to be deleted is shown in ~~**boldface struck through type**~~:

TITLE 10, UNITED STATES CODE

* * * * *

CHAPTER 55—MEDICAL AND DENTAL CARE

* * * * *

§ 1072. Definitions

In this chapter:
(1) ***

* * * * *

(7) The term "TRICARE program" means the ~~**managed health care program that is established by the Department of Defense under the authority of this chapter, principally section 1097 of this title, and includes the competitive selection of contractors to financially**~~

~~**underwrite the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services**~~ ***various programs carried out by the Secretary of Defense under this chapter and any other provision of law providing for the furnishing of medical and dental care and health benefits to members and former members of the uniformed services and their dependents. It includes the following health plan options:***

(A) TRICARE Select (a managed care option).
(B) TRICARE Choice (a self-managed option).
(C) TRICARE-for-Life.
(D) TRICARE Second Payer.

* * * * *

§ 1074. Medical and dental care for members and certain former members

* * * * *

(c)(1) Funds appropriated to a military department, the Department of Homeland Security (with respect to the Coast Guard when it is not operating as a service in the Navy), or the Department of Health and Human Services (with respect to the National Oceanic and Atmospheric Administration and the Public Health Service) may be used to provide medical and dental care to persons entitled to such care by law or regulations, including the provision of such care (other than elective private treatment) in private facilities for members of the uniformed services. If a private facility or health care provider providing care under this subsection is a health care provider under the Civilian Health and Medical Program of the Uniformed Services, the Secretary of Defense, after consultation with the other administering Secretaries, may by regulation require the private facility or health care provider to provide such care in accordance with the same payment rules (subject to any modifications considered appropriate by the Secretary) as apply under that program.

(2) (A) Subject to such exceptions as the Secretary of Defense considers necessary, coverage for medical care for members of the uniformed services under this subsection, and standards with respect to timely access to such care, shall be comparable to coverage for medical care and standards for timely access to such care under the managed care option of the TRICARE program known as ~~**TRICARE Prime**~~ ***TRICARE Select***.

(B) The Secretary of Defense shall enter into arrangements with contractors under the TRICARE program or with other appropriate contractors for the timely and efficient processing of claims under this subsection.

(C) The Secretary of Defense shall consult with the other administering Secretaries in the administration of this paragraph.

* * * * *

§ 1075. TRICARE health plan options

[The text of § 1075 is as set forth above.]

* * * * *

§ 1076d. TRICARE program: TRICARE ~~Standard~~ *Reserve Select* coverage for members of the Selected Reserve

(a) ELIGIBILITY.—
(1) Except as provided in paragraph (2), a member of the Selected Reserve of the Ready Reserve of a reserve component of the armed forces is eligible for health benefits under TRICARE ~~**Standard**~~ ***Reserve Select*** as provided in this section.
(2) Paragraph (1) does not apply to a member who is enrolled, or is eligible to enroll, in a health benefits plan under chapter 89 of title 5.

(b) TERMINATION OF ELIGIBILITY UPON TERMINATION OF SERVICE.—
(1) Except as provided in paragraph (2), eligibility for TRICARE ~~**Standard**~~ ***Reserve Select*** coverage of a member under this section shall terminate upon the termination of the member's service in the Selected Reserve.
(2) During the period beginning on the date of the enactment of this paragraph and ending December 31, 2018, eligibility for a member under this section who is involuntarily separated from the Selected Reserve under other than adverse conditions, as characterized by the Secretary concerned, shall terminate 180 days after the date on which the member is separated.

(c) FAMILY MEMBERS. While a member of a reserve component is covered by TRICARE ~~**Standard**~~ ***Reserve Select*** under the section, the members of the immediate family of such member are eligible for TRICARE ~~**Standard**~~ ***Reserve Select*** coverage as dependents of the member. If a member of a reserve component dies while in a period of coverage under this section, the eligibility of the members of the immediate family of such member for TRICARE ~~**Standard**~~ ***Reserve Select*** coverage shall continue for six months beyond the date of death of the member.

(d) PREMIUMS.—
(1) A member of a reserve component covered by TRICARE ~~**Standard**~~ ***Reserve Select*** under this section shall pay a premium for that coverage.
(2) The Secretary of Defense shall prescribe for the purposes of this section one premium for TRICARE ~~**Standard**~~ ***Reserve Select*** coverage of members without dependents and one premium for TRICARE ~~**Standard**~~ ***Reserve Select*** coverage of members with dependents referred to in subsection (f)(1). The premium prescribed for a coverage shall apply uniformly to all covered members of the reserve components.
(3) (A) The monthly amount of the premium in effect for a month for TRICARE ~~**Standard**~~ ***Reserve Select*** coverage under this section shall be the amount equal to 28 percent of the total monthly amount determined on an appropriate actuarial basis as being reasonable for that coverage.
(B) The appropriate actuarial basis for purposes of subparagraph (A) shall be determined, for each calendar year after calendar year 2009, by utilizing the actual cost of providing benefits under this section to members and their dependents during the calendar years preceding such calendar year.
(4) The premiums payable by a member of a reserve component under this subsection may be

deducted and withheld from basic pay payable to the member under section 204 of title 37 or from compensation payable to the member under section 206 of such title. The Secretary shall prescribe the requirements and procedures applicable to the payment of premiums.

(5) Amounts collected as premiums under this subsection shall be credited to the appropriation available for the Defense Health Program Account under section 1100 of this title, shall be merged with sums in such Account that are available for the fiscal year in which collected, and shall be available under subsection (b) of such section for such fiscal year.

(e) REGULATIONS. —The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this section.

(f) DEFINITIONS. —In this section:

(1) The term "immediate family", with respect to a member of a reserve component, means all of the member's dependents described in subparagraphs (A), (D), and (I) of section 1072(2) of this title.

(2) The term "TRICARE ~~**Standard**~~ ***Reserve Select***" means--

(A) medical care to which a dependent described in section 1076(a)(2) of this title is entitled; and

(B) health benefits contracted for under the authority of section 1079(a) of this title and subject to the same rates and conditions as apply to persons covered under that section.

§ 1076e. TRICARE program: TRICARE ~~Standard~~ *Retired Reserve* coverage for certain members of the Retired Reserve who are qualified for a non-regular retirement but are not yet age 60

(a) ELIGIBILITY.—

(1) Except as provided in paragraph (2), a member of the Retired Reserve of a reserve component of the armed forces who is qualified for a non-regular retirement at age 60 under chapter 1223 of this title, but is not age 60, is eligible for health benefits under TRICARE ~~**Standard**~~ ***Retired Reserve*** as provided in this section.

(2) Paragraph (1) does not apply to a member who is enrolled, or is eligible to enroll, in a health benefits plan under chapter 89 of title 5.

(b) TERMINATION OF ELIGIBILITY UPON OBTAINING OTHER TRICARE ~~**STANDARD**~~ ***RETIRED RESERVE*** COVERAGE. —Eligibility for TRICARE ~~**Standard**~~ ***Retired Reserve*** coverage of a member under this section shall terminate upon the member becoming eligible for TRICARE ~~**Standard**~~ coverage at age 60 under section 1086 of this title.

(c) FAMILY MEMBERS.— While a member of a reserve component is covered by TRICARE ~~**Standard**~~ ***Retired Reserve*** under this section, the members of the immediate family of such member are eligible for TRICARE Standard coverage as dependents of the member. If a member of a reserve component dies while in a period of coverage under this section, the eligibility of the members of the immediate family of such member for TRICARE ~~**Standard**~~ ***Retired Reserve*** coverage under this section shall continue for the same period of time that would be provided under section 1086 of this title if the member had been eligible at the time of death for

TRICARE ~~**Standard**~~ coverage under such section (instead of under this section).

(d) PREMIUMS.—

(1) A member of a reserve component covered by TRICARE ~~**Standard**~~ ***Retired Reserve*** under this section shall pay a premium for that coverage.

(2) The Secretary of Defense shall prescribe for the purposes of this section one premium for TRICARE ~~**Standard**~~ ***Retired Reserve*** coverage of members without dependents and one premium for TRICARE ~~**Standard**~~ ***Retired Reserve*** coverage of members with dependents referred to in subsection (f)(1). The premium prescribed for a coverage shall apply uniformly to all members of the reserve components covered under this section.

(3) The monthly amount of the premium in effect for a month for TRICARE ~~**Standard**~~ ***Retired Reserve*** coverage under this section shall be the amount equal to the cost of coverage that the Secretary determines on an appropriate actuarial basis.

(4) The Secretary shall prescribe the requirements and procedures applicable to the payment of premiums under this subsection.

(5) Amounts collected as premiums under this subsection shall be credited to the appropriation available for the Defense Health Program Account under section 1100 of this title, shall be merged with sums in such Account that are available for the fiscal year in which collected, and shall be available under subsection (b) of such section for such fiscal year.

(e) Regulations. —The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this section.

(f) Definitions.— In this section:

(1) The term "immediate family", with respect to a member of a reserve component, means all of the member's dependents described in subparagraphs (A), (D), and (I) of section 1072(2) of this title.

(2) The term "TRICARE ~~**Standard**~~ ***Retired Reserve***" means--

(A) medical care to which a dependent described in section 1076(b)(1) of this title is entitled; and

(B) health benefits contracted for under the authority of section 1086(a) of this title and subject to the same rates and conditions as apply to persons covered under that section.

* * * * *

§ 1079. Contracts for medical care for spouses and children: plans

* * * * *

~~**(b) Plans covered by subsection (a) shall include provisions for payment by the patient of the following amounts:**~~

~~**(1) $ 25 for each admission to a hospital, or the amount the patient would have been charged under section 1078(a) of this title had the care being paid for been obtained in a hospital of the uniformed services, whichever amount is the greater. The Secretary of Defense may exempt a patient from paying such amount if the hospital to which the patient is admitted does not impose a legal obligation on any of**~~

~~**its patients to pay for inpatient care.**~~

~~**(2) Except as provided in clause (3), the first $ 150 each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of all subsequent charges for such care during a fiscal year. Notwithstanding the preceding sentence, in the case of a dependent of an enlisted member in a pay grade below E-5, the initial deductible each fiscal year under this paragraph shall be limited to $ 50.**~~

~~**(3) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $ 300 (or in the case of the family group of an enlisted member in a pay grade below E-5, the first $ 100) each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of the additional charges for such care during a fiscal year.**~~

~~**(4) $ 25 for surgical care that is authorized by subsection (a) and received while in an outpatient status and that has been designated (under joint regulations to be prescribed by the administering Secretaries) as care to be treated as inpatient care for purposes of this subsection. Any care for which payment is made under this clause shall not be considered to be care received while in an outpatient status for purposes of clauses (2) and (3).**~~

~~**(5) An individual or family group of two or more persons covered by this section may not be required by reason of this subsection to pay a total of more than $ 1,000 for health care received during any fiscal year under a plan under subsection (a).**~~

(b) Section 1075 of this title shall apply to health care services under this section.

(c) ~~**The methods for making payment under subsection (b) shall be prescribed under joint regulations issued by the administering Secretaries.**~~ ***[Reserved.]***

* * * * *

(g)~~(1)~~ When a member dies while he is eligible for receipt of hostile fire pay under section 310 of title 37 or from a disease or injury incurred while eligible for such pay, his dependents who are receiving benefits under a plan covered by subsection (d) shall continue to be eligible for such benefits until they pass their twenty-first birthday.

~~**(2) In addition to any continuation of eligibility for benefits under paragraph (1), when a member dies while on active duty for a period of more than 30 days, the member's dependents who are receiving benefits under a plan covered by subsection (a) shall continue to be eligible for benefits under TRICARE Prime during the three-year period beginning on the date of the member's death, except that, in the case of such a dependent of the deceased who is described by subparagraph (D) or (I) of section 1072(2) of this title, the period of continued eligibility shall be the longer of the following periods beginning on such date:**~~

~~**(A) Three years.**~~

~~**(B) The period ending on the date on which such dependent attains 21 years of age.**~~

~~**(C) In the case of such a dependent who, at 21 years of age, is enrolled in a full-time course of study in a secondary school or in a full-time course of study in an institution of**~~

~~**higher education approved by the administering Secretary and was, at the time of the member's death, in fact dependent on the member for over one-half of such dependent's support, the period ending on the earlier of the following dates:**~~
~~**(i) The date on which such dependent ceases to pursue such a course of study, as determined by the administering Secretary.**~~
~~**(ii) The date on which such dependent attains 23 years of age.**~~
~~**(3) For the purposes of paragraph (2)(C), a dependent shall be treated as being enrolled in a full-time course of study in an institution of higher education during any reasonable period of transition between the dependent's completion of a full-time course of study in a secondary school and the commencement of an enrollment in a full-time course of study in an institution of higher education, as determined by the administering Secretary.**~~
~~**(4) The terms and conditions under which health benefits are provided under this chapter to a dependent of a deceased member under paragraph (2) shall be the same as those that would apply to the dependent under this chapter if the member were living and serving on active duty for a period of more than 30 days.**~~
~~**(5) In this subsection, the term "TRICARE Prime" means the managed care option of the TRICARE program.**~~ ***[Reserved.]***

* * * * *

(p) (1) Subject to such exceptions as the Secretary of Defense considers necessary, coverage for medical care under this section for the dependents described in paragraph (3), and standards with respect to timely access to such care, shall be comparable to coverage for medical care and standards for timely access to such care under the managed care option of the TRICARE program ~~known as TRICARE Prime~~.

(2) The Secretary of Defense shall enter into arrangements with contractors under the TRICARE program or with other appropriate contractors for the timely and efficient processing of claims under this subsection.

(3) This subsection applies with respect to a dependent referred to in subsection (a) who--

(A) is a dependent of a member of the uniformed services referred to in section 1074(c)(3) of this title and is residing with the member;

(B) is a dependent of a member who, after having served in a duty assignment described in section 1074(c)(3) of this title, has relocated without the dependent pursuant to orders for a permanent change of duty station from a remote location described in subparagraph (B)(ii) of such section where the member and the dependent resided together while the member served in such assignment, if the orders do not authorize dependents to accompany the member to the new duty station at the expense of the United States and the dependent continues to reside at the same remote location, or

(C) is a dependent of a reserve component member ordered to active duty for a period of more than 30 days and is residing with the member, and the residence is located more than 50 miles, or approximately one hour of driving time, from the nearest military medical treatment facility adequate to provide the needed care.

(4) The Secretary of Defense may provide for coverage of a dependent referred to in subsection (a) who is not described in paragraph (3) if the Secretary determines that exceptional circumstances warrant such coverage.

(5) The Secretary of Defense shall consult with the other administering Secretaries in the administration of this subsection.

* * * * *

§ 1079a. ~~CHAMPUS~~ *TRICARE program*: treatment of refunds and other amounts collected

All refunds and other amounts collected ***(including interagency transfers of funds or obligational authority and similar transactions)*** in the administration of the **~~Civilian Health and Medical Program of the Uniformed Services~~** ***TRICARE program*** shall be credited to the appropriation available for that program for the fiscal year in which the refund or amount is collected.

* * * * *

§ 1086. Contracts for health benefits for certain members, former members, and their dependents

(a) To assure that health benefits are available for the persons covered by subsection (c), the Secretary of Defense, after consulting with the other administering Secretaries, shall contract under the authority of this section for health benefits for those persons under the same insurance, medical service, or health plans he contracts for under section 1079(a) of this title. However, eye examinations may not be provided under such plans for persons covered by subsection (c).

~~(b) For persons covered by this section the plans contracted for under section 1079(a) of this title shall contain the following provisions for payment by the patient:~~
~~(1) Except as provided in paragraph (2), the first $ 150 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of all subsequent charges for such care during a fiscal year.~~
~~(2) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $ 300 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of the additional charges for such care during a fiscal year.~~
~~(3) 25 percent of the charges for inpatient care, except that in no case may the charges for inpatient care for a patient exceed $ 535 per day during the period beginning on April 1, 2006, and ending on September 30, 2011. The Secretary of Defense may exempt a patient from paying such charges if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.~~
~~(4) A member or former member of a uniformed service covered by this section by reason of section 1074(b) of this title, or an individual or family group of two or more persons covered by this section, may not be required to pay a total of more than $ 3,000 for health care received during any fiscal year under a plan contracted for under section 1079(a) of this title.~~
(b) Section 1075 of this title shall apply to health care services under this section.

* * * * *

(d) (1) A person who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.) is not eligible for health benefits under this section.

(2) The prohibition contained in paragraph (1) shall not apply to a person referred to in subsection (c) who--

(A) is enrolled in the supplementary medical insurance program under part B of such title (42 U.S.C. 1395j et seq.); and

(B) in the case of a person under 65 years of age, is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act [42 USCS §§ 1395c et seq.] pursuant to subparagraph (A) or (C) of section 226(b)(2) of such Act (42 U.S.C. 426(b)(2)) or section 226A(a) of such Act (42 U.S.C. 426-1(a)).

(3) (A) Subject to subparagraph (B), if a person described in paragraph (2) receives medical or dental care for which payment may be made under medicare and a plan contracted for under subsection (a), the amount payable for that care under the plan shall be the amount of the actual out-of-pocket costs incurred by the person for that care over the sum of--

(i) the amount paid for that care under medicare; and

(ii) the total of all amounts paid or payable by third party payers other than medicare.

(B) The amount payable for care under a plan pursuant to subparagraph (A) may not exceed the total amount that would be paid under the plan if payment for that care were made solely under the plan.

(C) In this paragraph:

(i) The term "medicare" means title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(ii) The term "third party payer" has the meaning given such term in section 1095(h)(1) of this title.

§ 1097. Contracts for medical care for retirees, dependents, and survivors: alternative delivery of health care

(a) IN GENERAL. The Secretary of Defense, after consulting with the other administering Secretaries, may contract for the delivery of health care to which covered beneficiaries are entitled under this chapter. The Secretary may enter into a contract under this section with any of the following:

(1) Health maintenance organizations.

(2) Preferred provider organizations.

(3) Individual providers, individual medical facilities, or insurers.

(4) Consortiums of such providers, facilities, or insurers.

* * * * *

(e) CHARGES FOR HEALTH CARE. ***Section 1075 of this title shall apply to health care services under this section.***

~~**(1) The Secretary of Defense may prescribe by regulation a premium, deductible, copayment, or other charge for health care provided under this section. In the case of contracts for health care services under this section or health care plans offered under section 1099 of this title for which the Secretary permits covered beneficiaries who are**~~

~~**covered by section 1086 of this title and who participate in such contracts or plans to pay an enrollment fee in lieu of meeting the applicable deductible amount specified in section 1086(b) of this title, the Secretary may establish the same (or a lower) enrollment fee for covered beneficiaries described in section 1086(d)(1) of this title who also participate in such contracts or plans. Without imposing additional costs on covered beneficiaries who participate in contracts for health care services under this section or health care plans offered under section 1099 of this title, the Secretary shall permit such covered beneficiaries to pay, on a quarterly basis, any enrollment fee required for such participation. Except as provided by paragraph (2), a premium, deductible, copayment, or other charge prescribed by the Secretary under this subsection may not be increased during the period beginning on April 1, 2006, and ending on September 30, 2011.**~~

~~**(2) Beginning October 1, 2012, the Secretary of Defense may only increase in any year the annual enrollment fees described in paragraph (1) by an amount equal to the percentage by which retired pay is increased under section 1401a of this title.**~~

* * * * *

§ 1097a. ***[Reserved.]*** ~~TRICARE Prime: automatic enrollments; payment options~~

~~(a) Automatic enrollment of certain dependents.~~

~~(1) In the case of a dependent of a member of the uniformed services who is entitled to medical and dental care under section 1076(a)(2)(A) of this title and resides in a catchment area in which TRICARE Prime is offered, the Secretary--~~

~~(A) shall automatically enroll the dependent in TRICARE Prime if the member is in pay grade E-4 or below; and~~

~~(B) may automatically enroll the dependent in TRICARE Prime if the member is in pay grade E-5 or higher.~~

~~(2) Whenever a dependent of a member is enrolled in TRICARE Prime under paragraph (1), the Secretary concerned shall provide written notice of the enrollment to the member.~~

~~(3) The enrollment of a dependent of the member may be terminated by the member or the dependent at any time.~~

~~(b) Automatic renewal of enrollments of covered beneficiaries.~~

~~(1) An enrollment of a covered beneficiary in TRICARE Prime shall be automatically renewed upon the expiration of the enrollment unless the renewal is declined.~~

~~(2) Not later than 15 days before the expiration date for an enrollment of a covered beneficiary in TRICARE Prime, the Secretary concerned shall--~~

~~(A) transmit a written notification of the pending expiration and renewal of enrollment to the covered beneficiary or, in the case of a dependent of a member of the uniformed services, to the member; and~~

~~(B) afford the beneficiary or member, as the case may be, an opportunity to decline the renewal of enrollment.~~

~~(c) Payment options for retirees. A member or former member of the uniformed services eligible for medical care and dental care under section 1074(b) of this title may elect to have any fee payable by the member or former member for an enrollment in TRICARE Prime withheld from the member's retired pay, retainer pay, or equivalent pay, as the case may be, or to be paid~~

~~from a financial institution through electronic transfers of funds. The fee shall be paid in accordance with the election. A member may elect under this section to pay the fee in full at the beginning of the enrollment period or to make payments on a monthly or quarterly basis.~~

~~(d) Regulations and exceptions. The Secretary of Defense shall prescribe regulations, including procedures, to carry out this section. Regulations prescribed to carry out the automatic enrollment requirements under this section may include such exceptions to the automatic enrollment procedures as the Secretary determines appropriate for the effective operation of TRICARE Prime.~~

~~(e) No copayment for immediate family. No copayment shall be charged a member for care provided under TRICARE Prime to a dependent of a member of the uniformed services described in subparagraph (A), (D), or (I) of section 1072(2) of this title.~~

~~(f) Definitions. In this section:~~

~~(1) The term "TRICARE Prime" means the managed care option of the TRICARE program.~~

~~(2) The term "catchment area", with respect to a facility of a uniformed service, means the service area of the facility, as designated under regulations prescribed by the administering Secretaries.~~

* * * * *

§ 1099. Health care enrollment system

(a) ESTABLISHMENT OF SYSTEM. —The Secretary of Defense, after consultation with the other administering Secretaries, shall establish a system of health care enrollment for covered beneficiaries who reside in the United States.

(b) DESCRIPTION OF SYSTEM. —Such system shall—

(1) allow covered beneficiaries to elect a health care plan from eligible health care plans designated by the Secretary of Defense; or

(2) if necessary in order to ensure full use of facilities of the uniformed services in a geographical area, assign covered beneficiaries who reside in such area to such facilities.

~~(c) HEALTH CARE PLANS AVAILABLE UNDER SYSTEM. —A health care plan designated by the Secretary of Defense under the system described in subsection (a) shall provide all health care to which a covered beneficiary is entitled under this chapter. Such a plan may consist of any of the following:~~

~~(1) Use of facilities of the uniformed services.~~

~~(2) The Civilian Health and Medical Program of the Uniformed Services.~~

~~(3) Any other health care plan contracted for by the Secretary of Defense.~~

~~(4) Any combination of the plans described in paragraphs (1), (2), and (3).~~

(c) HEALTH CARE PLANS AVAILABLE UNDER SYSTEM. —Health care services for covered beneficiaries under this chapter require enrollment by the covered beneficiary, including payment of the applicable enrollment fee, in one of the following health care plans:

(1) TRICARE Select under section 1075 of this title.

(2) TRICARE Choice under section 1075 of this title.

(3) TRICARE-for-Life plan under section 1086(d) of this title.

(4) TRICARE Second Payer plan under section 1075 of this title.

(d) REGULATIONS. —The Secretary of Defense, after consultation with the other administering Secretaries, shall prescribe regulations to carry out this section.

Section 702 would make changes to TRICARE cost sharing relating to the TRICARE for Life and Pharmacy Benefits Program to address the explosion in health care costs and make the health benefit sustainable. The Defense Health Budget has grown from $15.4 billion in fiscal year (FY) 1996 to nearly $48 billion in FY 2015. During this period, TRICARE cost sharing requirements have changed very little, contributing substantially to the cost explosion. Without adjustments to the cost sharing structure, the cost of the Military Health System will continue to crowd out more and more programs critical to the national defense.

Subsection (a) would introduce an annual enrollment fee for new TRICARE for Life beneficiaries (i.e., those retirees and dependents who become Medicare-eligible after enactment). This fee would not be charged to a survivor of a member who died while on active duty or a disability retiree or dependent of such a person and grandfathers those beneficiaries already in the TFL program prior to enactment. This enrollment fee would also be based on a percentage of retired pay, phased in over four years, and subject to a maximum amount. The applicable percentage and maximum amounts for calendar years 2017 through 2020 for a family of 2 or more persons would be as provided in the following table.

	Percentage	Maximum Amount for Retired Grades O-7 through 0-10	Maximum Amount for all Others
2017	0.5	$200	$150
2018	1.0	$400	$300
2019	1.5	$600	$450
2020	2.0	$800	$600

After 2020, the percentage would remain 2.0 and the maximum amounts would be annually indexed by the National Health Expenditures per capita rate, as established by the Secretary of Health and Human Services, rounded to the nearest multiple of $1.

Subsection (b) would make revisions to the TRICARE pharmacy benefits program. It would set per-prescription generally applicable copayments in 2017 through 2025, but would exempt from these copayments survivors member who died while on active duty and disability retirees and their family members. The copayment amounts would be as follows:

For:	The cost	The cost	The cost	The cost	The cost amount

	sharing amount for 30-day supply of a retail generic is:	sharing amount for 30-day supply of a retail formulary is:	sharing amount for a 90-day supply of a mail order generic is:	sharing amount for a 90-day supply of a mail order formulary is:	for a 90-day supply of a mail order non-formulary is:
2017	$10	$28	$0	$28	$54
2018	$10	$30	$0	$30	$58
2019	$10	$32	$0	$32	$62
2020	$11	$34	$11	$34	$66
2021	$11	$36	$11	$36	$70
2022	$11	$38	$11	$38	$75
2023	$12	$40	$12	$40	$80
2024	$13	$42	$13	$42	$85
2025	$14	$45	$14	$45	$90

After 2025, amounts would be adjusted based on changes in costs of pharmaceutical agents and prescription dispensing. Retail prescriptions would continue to be for a supply of up to 30 days, and mail order prescriptions for a supply of up to 90 days.

Subsection (c) would provide authority for the Secretary of Defense to adjust payments into the Medicare-Eligible Retiree Health Care Fund in the event that on October 1, at the time the annual contributions into the Fund are due, Congress is actively considering significant changes in law that would affect the amount due for the new fiscal year, the payment into the Fund could be an adjusted amount that would be the correct amount if the changes are enacted. Within 120 days, the Secretary would be required to tell the Secretary of Treasury whether the changes were enacted and if an additional contribution to the Fund is needed for that fiscal year. If needed, the Secretary of Treasury will promptly make it. Similar transactions would occur with respect to the non-DoD uniformed services. This change in process will ensure that the current year budget correctly reflects actual anticipated requirements.

Budget Implications: This section would reduce the requirements for the Military Health System's Unified Medical Budget by $605 million in FY 2017 and $3.4 billion for FY 2017 – FY 2021. Specifically, the proposals would reduce Defense Health Program requirements by $17 million for FY 2017 and by $220 million for FY 2017 – FY 2021. Funding requirements for the Military Departments' Medicare-Eligible Retiree Health Care Fund (MERHCF) Contribution accounts would be reduced by $588 million in FY 2017 and by $3.2 billion for FY 2017 – FY 2021. The proposals would result in mandatory savings of $37 million in FY 2017 and $1.2 billion for FY 2017 – FY 2021. The reduced discretionary contributions to the MERHCF would also result in reduced mandatory collections of the amounts listed above for the Department of Defense (DoD), which are non-scoreable costs; including the effects on the Coast Guard, Public Health Service, and National Oceanic and Atmospheric Administration, these amounts increase to $605 million in FY 2017 and $3.3 billion for FY 2017 – FY 2021. DoD estimates these savings and costs based on revising cost shares (enrollment fees and pharmacy co-pays). The implementation of a TRICARE for Life enrollment fee would be ramped up over a period of four years with a mechanism for indexing those fees thereafter based on the growth in the annual retiree COLA. The pharmacy co-pay increases would be phased-in over a nine year

period with increases thereafter tied to the cost of pharmaceutical agents and prescription dispensing. Estimates of the impacts of those revised cost shares include reductions in direct costs from the cost shares, reduced users and reduced utilization of health care services.

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Defense Health	-17	-27	-35	-64	-77	O&M, Defense Health Program	01	02
Army	-106	-109	-113	-119	-124	Medicare-Eligible Retiree Health Fund Contribution (MERHFC), Army	01/02	01
Navy	-111	-116	-122	-127	-132	MERHFC, Navy	01/02	01
Marine Corps	-63	-65	-69	-71	-74	MERHFC, Marine Corps	01/02	01
Air Force	-108	-113	-119	-125	-130	MERHFC, Air Force	01/02	01
Army Reserve	-25	-26	-28	-29	-30	MERHFC, Army Reserve	01	01
Navy Reserve	-11	-12	-12	-13	-13	MERHFC, Navy Reserve	01	01
Marine Corps Reserve	-7	-7	-7	-8	-8	MERHFC, Marine Corps Reserve	01	01
Air Force Reserve	-12	-12	-13	-13	-14	MERHFC, Air Force Reserve	01	01
Army National Guard	-44	-46	-48	-50	-53	MERHFC, NG Personnel, Army	01	01
Air National Guard	-20	-21	-21	-22	-23	MERHFC, NG Personnel, Air Force	01	01

Total	-524	-554	-587	-641	-678			

Changes to Existing Law: This section would make the following changes to chapters 55 and 56 of title 10, United States Code.

TITLE 10, UNITED STATES CODE

CHAPTER 55—MEDICAL AND DENTAL CARE

* * * * *

§ 1074g. Pharmacy benefits program

(a) PHARMACY BENEFITS.—(1) The Secretary of Defense, after consulting with the other administering Secretaries, shall establish an effective, efficient, integrated pharmacy benefits program under this chapter (hereinafter in this section referred to as the "pharmacy benefits program").

(2)(A) The pharmacy benefits program shall include a uniform formulary of pharmaceutical agents, which shall assure the availability of pharmaceutical agents in the complete range of therapeutic classes. The selection for inclusion on the uniform formulary of particular pharmaceutical agents in each therapeutic class shall be based on the relative clinical and cost effectiveness of the agents in such class.

(B) In considering the relative clinical effectiveness of agents under subparagraph (A), the Secretary shall presume inclusion in a therapeutic class of a pharmaceutical agent, unless the Pharmacy and Therapeutics Committee established under subsection (b) finds that a pharmaceutical agent does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome over the other drugs included on the uniform formulary.

(C) In considering the relative cost effectiveness of agents under subparagraph (A), the Secretary shall rely on the evaluation by the Pharmacy and Therapeutics Committee of the costs of agents in a therapeutic class in relation to the safety, effectiveness, and clinical outcomes of such agents.

(D) The Secretary shall establish procedures for the selection of particular pharmaceutical agents for the uniform formulary. Such procedures shall be established so as best to accomplish, in the judgment of the Secretary, the objectives set forth in paragraph (1). Except as provided in subparagraph (F), no pharmaceutical agent may be excluded from the uniform formulary except upon the recommendation of the Pharmacy and Therapeutics Committee.

(E) Pharmaceutical agents included on the uniform formulary shall be available to eligible covered beneficiaries through—

(i) facilities of the uniformed services, consistent with the scope of health care services offered in such facilities and additional determinations by the Pharmacy and Therapeutics Committee of the relative clinical and cost effectiveness of the agents;

(ii) retail pharmacies designated or eligible under the TRICARE program or the Civilian Health and Medical Program of the Uniformed Services to provide pharmaceutical agents to covered beneficiaries; or

(iii) the national mail-order pharmacy program.

(F)(i) The Secretary may implement procedures to place selected over-the-counter drugs on the uniform formulary and to make such drugs available to eligible covered beneficiaries. An over-the-counter drug may be included on the uniform formulary only if the Pharmacy and Therapeutics Committee established under subsection (b) finds that the over-the-counter drug is cost effective and clinically effective. If the Pharmacy and Therapeutics Committee recommends an over-the-counter drug for inclusion on the uniform formulary, the drug shall be considered to be in the same therapeutic class of pharmaceutical agents, as determined by the Committee, as similar prescription drugs.

(ii) Regulations prescribed by the Secretary to carry out clause (i) shall include the following with respect to over-the-counter drugs included on the uniform formulary:

(I) A determination of the means and conditions under paragraphs (5) and (6) through which over-the-counter drugs will be available to eligible covered beneficiaries and the amount of cost sharing that such beneficiaries will be required to pay for over-the-counter drugs, if any, except that no such cost sharing may be required for a member of a uniformed service on active duty.

(II) Any terms and conditions for the dispensing of over-the-counter drugs to eligible covered beneficiaries.

(3) The pharmacy benefits program shall assure the availability of clinically appropriate pharmaceutical agents to members of the armed forces, including, where appropriate, agents not included on the uniform formulary described in paragraph (2).

(4) The pharmacy benefits program may provide that prior authorization be required for certain pharmaceutical agents to assure that the use of such agents is clinically appropriate.

(5) The pharmacy benefits program shall assure the availability to eligible covered beneficiaries of pharmaceutical agents not included on the uniform formulary. Such pharmaceutical agents shall be available through the national mail-order pharmacy program under terms and conditions that shall include cost-sharing by the eligible covered beneficiary as specified in paragraph (6).

~~(6)(A) The Secretary, in the regulations prescribed under subsection (h), shall establish cost-sharing requirements under the pharmacy benefits program. In accordance with subparagraph (C), such cost-sharing requirements shall consist of the following:~~

~~(i) With respect to each supply of a prescription covering not more than 30 days that is obtained by a covered beneficiary under the TRICARE retail pharmacy program-~~

~~(I) in the case of generic agents, $8;~~

~~(II) in the case of formulary agents, $20.~~

~~(ii) With respect to each supply of a prescription covering not more than 90 days that is obtained by a covered beneficiary under the national mail-order pharmacy program-~~

~~(I) in the case of generic agents, $0;~~

~~(II) in the case of formulary agents, $16; and~~

~~(III) in the case of nonformulary agents, $46.~~

~~(B) For a medicare-eligible beneficiary, the cost-sharing requirements may not be in excess of the cost-sharing requirements applicable to all other beneficiaries covered by section 1086 of this title. For purposes of the preceding sentence, a medicare-eligible beneficiary is a~~

~~beneficiary eligible for health benefits under section 1086 of this title pursuant to subsection (d)(2) of such section.~~

~~(C)(i) Beginning October 1, 2013, the amount of any increase in a cost-sharing amount specified in subparagraph (A) in a year may not exceed the amount equal to the percentage of such cost-sharing amount at the time of such increase equal to the percentage by which retired pay is increased under section 1401a of this title in that year.~~

~~(ii) If the amount of the increase otherwise provided for a year by clause (i) is less than $1, the increase shall not be made for such year, but shall be carried over to, and accumulated with, the amount of the increase for the subsequent year or years and made when the aggregate amount of increases carried over under this clause for a year is $1 or more.~~

~~(iii) The provisions of this subparagraph shall not apply to any increase in cost-sharing amounts described in clause (i) that is made by the Secretary of Defense on or after October 1, 2022. The Secretary may increase copayments, as considered appropriate by the Secretary, beginning on October 1, 2022.~~

"(6)(A) In the case of any of the calendar years 2017 through 2025 the cost sharing referred to in paragraph (5) shall be payment by an eligible covered beneficiary of amounts determined in accordance with the following table:

For:	***The cost sharing amount for 30-day supply of a retail generic is:***	***The cost sharing amount for 30-day supply of a retail formulary is:***	***The cost sharing amount for a 90-day supply of a mail order generic is:***	***The cost sharing amount for a 90-day supply of a mail order formulary is:***	***The cost amount for a 90-day supply of a mail order non-formulary is:***
2017	***$10***	***$28***	***$0***	***$28***	***$54***
2018	***$10***	***$30***	***$0***	***$30***	***$58***
2019	***$10***	***$32***	***$0***	***$32***	***$62***
2020	***$11***	***$34***	***$11***	***$34***	***$66***
2021	***$11***	***$36***	***$11***	***$36***	***$70***
2022	***$11***	***$38***	***$11***	***$38***	***$75***
2023	***$12***	***$40***	***$12***	***$40***	***$80***
2024	***$13***	***$42***	***$13***	***$42***	***$85***
2025	***$14***	***$45***	***$14***	***$45***	***$90***

"(B) For any year after 2025, the cost sharing referred to in paragraph (5) shall be payment by an eligible covered beneficiary of amounts equal to the cost-sharing amounts for the previous year, adjusted by an amount, if any, as determined by the Secretary to reflect changes in the costs of pharmaceutical agents and prescription dispensing, rounded to the nearest dollar.

"(C) Notwithstanding subparagraphs (A) and (B), the cost-sharing amounts referred to in paragraph (5) for any year after 2016 shall be the cost-sharing amounts, if any, under this section as of January 1, 2016, in the case of—

"(i) a dependent of a member of the uniformed services who dies while on active duty;

"(ii) a member retired under chapter 61 of this title; or

“(iii) a dependent of such a member.”.

(7) The Secretary shall establish procedures for eligible covered beneficiaries to receive pharmaceutical agents that are not included on the uniform formulary but that are considered to be clinically necessary. Such procedures shall include peer review procedures under which the Secretary may determine that there is a clinical justification for the use of a pharmaceutical agent that is not on the uniform formulary, in which case the pharmaceutical agent shall be provided under the same terms and conditions as an agent on the uniform formulary. Such procedures shall also include an expeditious appeals process for an eligible covered beneficiary, or a network or uniformed provider on behalf of the beneficiary, to establish clinical justification for the use of a pharmaceutical agent that is not on the uniform formulary.

(8) In carrying out this subsection, the Secretary shall ensure that an eligible covered beneficiary may continue to receive coverage for any maintenance pharmaceutical that is not on the uniform formulary and that was prescribed for the beneficiary before October 5, 1999, and stabilized the medical condition of the beneficiary.

(9)(A) Beginning on October 1, 2015, the pharmacy benefits program shall require eligible covered beneficiaries generally to refill non-generic prescription maintenance medications through military treatment facility pharmacies or the national mail-order pharmacy program.

(B) The Secretary shall determine the maintenance medications subject to the requirement under subparagraph (A). The Secretary shall ensure that--

(i) such medications are generally available to eligible covered beneficiaries through retail pharmacies only for an initial filling of a 30-day or less supply; and

(ii) any refills of such medications are obtained through a military treatment facility pharmacy or the national mail-order pharmacy program.

(C) The Secretary may exempt the following prescription maintenance medications from the requirement of subparagraph (A):

(i) Medications that are for acute care needs.

(ii) Such other medications as the Secretary determines appropriate.

(b) ESTABLISHMENT OF COMMITTEE.—(1) The Secretary of Defense shall, in consultation with the Secretaries of the military departments, establish a Pharmacy and Therapeutics Committee for the purpose of developing the uniform formulary of pharmaceutical agents required by subsection (a), reviewing such formulary on a periodic basis, and making additional recommendations regarding the formulary as the committee determines necessary and appropriate. The committee shall include representatives of pharmacies of the uniformed services facilities and representatives of providers in facilities of the uniformed services. Committee members shall have expertise in treating the medical needs of the populations served through such entities and in the range of pharmaceutical and biological medicines available for treating such populations. The committee shall function under procedures established by the Secretary under the regulations prescribed under subsection (h).

(2) The committee shall meet at least quarterly and shall, during meetings, consider for inclusion on the uniform formulary under the standards established in subsection (a) any drugs newly approved by the Food and Drug Administration.

(c) ADVISORY PANEL.—(1) Concurrent with the establishment of the Pharmacy and Therapeutics Committee under subsection (b), the Secretary shall establish a Uniform Formulary Beneficiary Advisory Panel to review and comment on the development of the uniform formulary. The Secretary shall consider the comments of the panel before implementing the uniform formulary or implementing changes to the uniform formulary.

(2) The Secretary shall determine the size and membership of the panel established under paragraph (1), which shall include members that represent—

(A) nongovernmental organizations and associations that represent the views and interests of a large number of eligible covered beneficiaries;

(B) contractors responsible for the TRICARE retail pharmacy program;

(C) contractors responsible for the national mail-order pharmacy program; and

(D) TRICARE network providers.

(d) PROCEDURES.—(1) In the operation of the pharmacy benefits program under subsection (a), the Secretary of Defense shall assure through management and new contractual arrangements that financial resources are aligned such that the cost of prescriptions is borne by the organization that is financially responsible for the health care of the eligible covered beneficiary.

(2) The Secretary shall use a modification to the bid price adjustment methodology in the managed care support contracts current as of October 5, 1999, to ensure equitable and timely reimbursement to the TRICARE managed care support contractors for pharmaceutical products delivered in the nonmilitary environments. The methodology shall take into account the "at-risk" nature of the contracts as well as managed care support contractor pharmacy costs attributable to changes to pharmacy service or formulary management at military medical treatment facilities, and other military activities and policies that affect costs of pharmacy benefits provided through the Civilian Health and Medical Program of the Uniformed Services. The methodology shall also account for military treatment facility costs attributable to the delivery of pharmaceutical products in the military facility environment which were prescribed by a network provider.

(e) PHARMACY DATA TRANSACTION SERVICE—The Secretary of Defense shall implement the use of the Pharmacy Data Transaction Service in all fixed facilities of the uniformed services under the jurisdiction of the Secretary, in the TRICARE retail pharmacy program, and in the national mail-order pharmacy program.

(f) PROCUREMENT OF PHARMACEUTICALS BY TRICARE RETAIL PHARMACY PROGRAM.—With respect to any prescription filled after January 28, 2008, the TRICARE retail pharmacy program shall be treated as an element of the Department of Defense for purposes of the procurement of drugs by Federal agencies under section 8126 of title 38 to the extent necessary to ensure that pharmaceuticals paid for by the Department of Defense that are provided by pharmacies under the program to eligible covered beneficiaries under this section are subject to the pricing standards in such section 8126.

(g) DEFINITIONS.—In this section:

(1) The term "eligible covered beneficiary" means a covered beneficiary for whom eligibility to receive pharmacy benefits through the means described in subsection (a)(2)(E) is established under this chapter or another provision of law.

(2) The term "pharmaceutical agent" means drugs, biological products, and medical devices under the regulatory authority of the Food and Drug Administration.

(3) The term "over-the-counter drug" means a drug that is not subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)).

(4) The term "prescription drug" means a drug that is subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)).

(h) REGULATIONS.—The Secretary of Defense shall, after consultation with the other administering Secretaries, prescribe regulations to carry out this section.

* * * * *

§ 1086. Contracts for health benefits for certain members, former members, and their dependents

(a) To assure that health benefits are available for the persons covered by subsection (c), the Secretary of Defense, after consulting with the other administering Secretaries, shall contract under the authority of this section for health benefits for those persons under the same insurance, medical service, or health plans he contracts for under section 1079(a) of this title. However, eye examinations may not be provided under such plans for persons covered by subsection (c).

(b) For persons covered by this section the plans contracted for under section 1079(a) of this title shall contain the following provisions for payment by the patient:

(1) Except as provided in paragraph (2), the first $150 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of all subsequent charges for such care during a fiscal year.

(2) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $300 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of the additional charges for such care during a fiscal year.

(3) 25 percent of the charges for inpatient care, except that in no case may the charges for inpatient care for a patient exceed $535 per day during the period beginning on April 1, 2006, and ending on September 30, 2011. The Secretary of Defense may exempt a patient from paying such charges if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

(4) A member or former member of a uniformed service covered by this section by reason of section 1074(b) of this title, or an individual or family group of two or more persons covered by this section, may not be required to pay a total of more than $3,000 for health care received during any fiscal year under a plan contracted for under section 1079(a) of this title.

(c) Except as provided in subsection (d), the following persons are eligible for health benefits under this section:

(1) Those covered by sections 1074(b) and 1076(b) of this title, except those covered by section 1072(2)(E) of this title.

(2) A dependent (other than a dependent covered by section 1072(2)(E) of this title) of a member of a uniformed service-

(A) who died while on active duty for a period of more than 30 days; or

(B) who died from an injury, illness, or disease incurred or aggravated—

(i) while on active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive duty training; or

(ii) while traveling to or from the place at which the member is to perform, or has performed, such active duty, active duty for training, or inactive duty training.

(3) A dependent covered by clause (F), (G), or (H) of section 1072(2) of this title who is not eligible under paragraph (1).

(d)(1) A person who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.) is not eligible for health benefits under this section.

(2) The prohibition contained in paragraph (1) shall not apply to a person referred to in subsection (c) who–

(A) is enrolled in the supplementary medical insurance program under part B of such title (42 U.S.C. 1395j et seq.); and

(B) in the case of a person under 65 years of age, is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act pursuant to subparagraph (A) or (C) of section 226(b)(2) of such Act (42 U.S.C. 426(b)(2)) or section 226A(a) of such Act (42 U.S.C. 426–1(a)).

(3)(A) Subject to subparagraph (B), if a person described in paragraph (2) receives medical or dental care for which payment may be made under medicare and a plan contracted for under subsection (a), the amount payable for that care under the plan shall be the amount of the actual out-of-pocket costs incurred by the person for that care over the sum of-

(i) the amount paid for that care under medicare; and

(ii) the total of all amounts paid or payable by third party payers other than medicare.

(B) The amount payable for care under a plan pursuant to subparagraph (A) may not exceed the total amount that would be paid under the plan if payment for that care were made solely under the plan.

(C)(i) A person described in paragraph (2) (except as provided in clauses (vi) and (vii)) shall be required to pay an annual enrollment fee as a condition of eligibility for health care benefits under this section. Such enrollment fee shall be an amount (rounded to the nearest dollar) equal to the applicable percentage (specified in clause (ii)) of the annual retired pay of the member or former member upon whom the covered beneficiary's eligibility is based, except that the amount of such enrollment fee shall not be in excess of the applicable maximum enrollment fee (specified in clause (iii)). In the case of enrollment for a period less than a full calendar year, the enrollment fee shall be a pro-rated amount of the full-year enrollment fee.

(ii) The applicable percentage of retired pay shall be determined in accordance with the following table:

For:	*The applicable percentage for a family group of two or more*	*The applicable percentage for an individual is:*

	persons is:	
2017	*0.50%*	*0.25%*
2018	*1.00%*	*0.50%*
2019	*1.50%*	*0.75%*
2020 and after	*2.00%*	*1.00%*

(iii) For any year 2017 through 2020, the applicable maximum enrollment fee for a family group of two or more persons shall be determined in accordance with the following table:

For:	*The applicable maximum enrollment fee for a family group whose eligibility is based upon a member or former member of retired grade O-7 or above is:*	*The applicable maximum enrollment fee for a family group whose eligibility is based upon a member or former member of retired grade O-6 or below is:*
2017	*$200*	*$150*
2018	*$400*	*$300*
2019	*$600*	*$450*
2020	*$800*	*$600*

(iv) For any year after 2020, the applicable maximum enrollment fee shall be annually indexed by the National Health Expenditures per capita rate, as established by the Secretary of Health and Human Services, rounded to the nearest multiple of $1.

(v) The applicable maximum enrollment fee for an individual shall be one-half the corresponding maximum fee for a family group of two or more persons (as determined under clauses (iii) and (iv)).

(vi) Clause (i) does not apply to—

(I) a dependent of a member of the uniformed services who dies while on active duty;

(II) a member retired under chapter 61 of this title; or

(III) a dependent of such a member.

(vii) Clause (i) does not apply to a person who, before January 1, 2017, met the conditions described in paragraphs (2)(A) and (B).

~~(C)~~ *(D)* In this paragraph:

(i) The term "medicare" means title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(ii) The term "third party payer" has the meaning given such term in section 1095(h)(1) of this title.

(4) ***

(e) ***

* * * * *

CHAPTER 56—DEPARTMENT OF DEFENSE MEDICARE-ELIGIBLE RETIREE HEALTH CARE FUND

§ 1116. Payments into the Fund

(a) At the beginning of each fiscal year after September 30, 2005, the Secretary of the Treasury shall promptly pay into the Fund from the General Fund of the Treasury—

(1) the amount certified to the Secretary by the Secretary of Defense under subsection (c)(1), which (together with any amount paid into the Fund under subsection (c)(4)) shall be the contribution to the Fund for that fiscal year required by section 1115; and

(2) the amount determined by each administering Secretary under section 1111(c) as the contribution to the Fund on behalf of the members of the uniformed services under the jurisdiction of that Secretary.

(b) At the beginning of each fiscal year, the Secretary of Defense shall determine the sum of the following:

(1) The amount of the payment for that year under the amortization schedule determined by the Board of Actuaries under section 1115(a) of this title for the amortization of the original unfunded liability of the Fund.

(2) The amount (including any negative amount) of the Department of Defense contribution for that year as determined by the Secretary of Defense under section 1115(b) of this title.

(3) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(2) of this title for the amortization of any cumulative unfunded liability (or any gain) to the Fund resulting from changes in benefits.

(4) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(3) of this title for the amortization of any cumulative actuarial gain or loss to the Fund resulting from actuarial assumption changes.

(5) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(4) of this title for the amortization of any cumulative actuarial gain or loss to the Fund resulting from actuarial experience.

(c)*(1) Except as provided in paragraph (2), t*~~T~~he Secretary of Defense shall promptly certify the amount determined under subsection (b) each year to the Secretary of the Treasury.

(2) If for any fiscal year the Secretary of Defense determines at the beginning of that fiscal year that the amount that would otherwise be required to be certified under paragraph (1) for that fiscal year would not be accurate if there were to be enacted during the current session of Congress a significant change in law then under active consideration by Congress that upon enactment would reduce the amount otherwise required to be certified under paragraph (1) for that fiscal year, the Secretary may certify to the Secretary of the Treasury under paragraph (1) a reduced amount for that fiscal year taking into consideration the amount of the reduction for that fiscal year that would occur upon enactment of such change in law.

(3) Not later than 120 days after the beginning of a fiscal year for which a certification under paragraph (1) is submitted pursuant to paragraph (2), the Secretary of Defense—

(A) shall notify the Secretary of the Treasury whether since the beginning of the fiscal year a significant change in law has been enacted which if in effect at the beginning of the fiscal year would have resulted in a revised amount certified under paragraph (1) without regard to paragraph (2); and

(B) based upon any such change in law since the beginning of the fiscal year, shall certify a final amount for the fiscal year.

(4) If a final amount certified under paragraph (3) for any fiscal year is greater than the amount certified pursuant to paragraph (2) for that fiscal year, the Secretary of the Treasury shall promptly pay into the Fund from the General Fund of the Treasury the difference between those amounts.

(5) In this subsection, the term "under active consideration by Congress", with respect to a bill or joint resolution in the Senate or House of Representatives, means that the bill or joint resolution—

(A) has been passed by either House of Congress; or

(B) has been reported by the Committee on Armed Services of the Senate or House or Representatives to its respective House and referred to the appropriate calendar.

(d) At the same time as the Secretary of Defense makes the certification under subsection (c), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives the information provided to the Secretary of the Treasury under that subsection.

Section 703 would require physicians and suppliers who annually enroll as participating providers with Medicare to accept the TRICARE participating provider rate when treating TRICARE patients. Currently, as a condition for participating in the Medicare program and receiving Medicare reimbursement, hospitals must agree to be a participating provider under the TRICARE and Department of Veterans Affairs (VA) programs, and comply with TRICARE (or VA) regulatory requirements concerning admission practices and payment methodology. This section would place an analogous requirement on individual providers.

This section would increase access to care for TRICARE Standard patients, as well as for TRICARE Prime patients in geographic areas where network access to certain specialties has not been achievable. This improved access would improve health outcomes, customer service and beneficiary satisfaction.

Budget Implications: There are no costs associated with this proposal. TRICARE beneficiaries will receive the same healthcare, but this proposal would provide all TRICARE beneficiaries immediate access to more health care providers.

Changes to Existing Law: This proposal would make the following change to section 1842(h)(1) of the Social Security Act (42 U.S.C. 1395u(h)(1)):

PROVISIONS RELATING TO THE ADMINISTRATION OF PART B

SEC. 1842. (a) ***

* * * * * * *

(h) PARTICIPATING PHYSICIAN OR SUPPLIER; AGREEMENT WITH SECRETARY; PUBLICATION OF DIRECTORIES; AVAILABILITY; INCLUSION OF PROGRAM IN EXPLANATION OF BENEFITS; PAYMENT OF CLAIMS ON ASSIGNMENT-RELATED BASIS.—

(1) Any physician or supplier may voluntarily enter into an agreement with the Secretary to become a participating physician or supplier. For purposes of this section, the term "participating physician or supplier" means a physician or supplier (excluding any provider of services) who, before the beginning of any year beginning with 1984, enters into an agreement with the Secretary which provides that such physician or supplier will accept payment under this part on an assignment-related basis for all items and services furnished to individuals enrolled under this part during such year. In the case of a newly licensed physician or a physician who begins a practice in a new area, or in the case of a new supplier who begins a new business, or in such similar cases as the Secretary may specify, such physician or supplier may enter into such an agreement after the beginning of a year, for items and services furnished during the remainder of the year. Any physician or supplier who voluntarily enters into an agreement with the Secretary to become a participating physician or supplier shall be deemed to have agreed to be a participating provider of medical care or services under any health plan contracted for under section 1079 or 1086 of title 10, United States Code, or under section 1781 of title 38, United States Code, in accordance with the payment methodology and amounts prescribed under joint regulations prescribed by the Secretary, the Secretary of Defense and the Secretary of Homeland Security pursuant to sections 1079 and 1086 of title 10, United States Code, and regulations prescribed by the Secretary of Veterans Affairs pursuant to section 1781 of title 38, United States Code.

(2) ***

* * * * * * *

Section 704 would create parity between the TRICARE Program and the Affordable Care Act requirements, applicable to group health plans and health insurers, regarding free coverage of preventive health services. Section (a) creates a new 1074m of title 10, United States Code, to mirror the requirements contained in Section 2713 of the Public Health Services Act, enacted as part of the Affordable Care Act. Section (a) also permits coverage of additional preventive health care services and screenings as prescribed in regulations by the Secretary of Defense. All preventive health care services provided under this new authority will be provided to beneficiaries free of charge. This statutory flexibility will allow the Department to add additional preventive health care services and screenings when determined to be appropriate medical care. By having the ability to review guidelines from nationally recognized organizations and evaluate based on best evidence, the Defense Health Agency (DHA) would make available those preventive services that would of greatest benefit to TRICARE beneficiaries in a more timely manner.

Statutory change will permit a more timely adoption of evidence-based preventive health care services and screenings consistent with evolving national trends, Health and Human Services and United States Preventive Services Task Force (USPSTF) guidelines and recommendations, and the practice of medicine. The Director, DHA could also adopt other preventive measures based on hierarchy of evidence of safety and efficacy. Current law only allows for specifically enumerated preventive health care services and cancer screenings. Section 1074d of Title 10 of the United States Code allows for preventive health care screening for colon and prostate cancer in men and cervical, breast, and colon cancer in women. As new evidenced based preventive health care services become available a delay currently occurs in providing these services to TRICARE beneficiaries until the statute is changed. This change would also include other preventive health care services not related to cancer screening.

Section (c) expands well-child care and increases access to health promotion and diseases prevention visits for TRICARE beneficiaries. Specifically, this section modifies Section 1079 of title 10, United States Code, to extend the TRICARE well-child care benefit to all dependents under 18 years of age (up from 6 years of age currently). The proposal will also eliminate the requirement that health promotion and disease prevention visits only be provided in connection with immunizations or specific cancer screenings, thereby expanding access to important preventive services. The Department believes this is an important step in ensuring we focus on moving from a system that is based primarily on treatment to one that emphasizes the importance of preventive services in improving the overall health of our beneficiary population, and in turn reducing total health care expenditures.

This broader statutory authority would allow the Secretary of Defense to achieve greater parity between the TRICARE preventive services benefit and Medicare, Medicaid and all commercial plans governed by the Patient Protection and Affordable Care Act. Existing authority in Section 711 of the National Defense Authorization Act for Fiscal Year 2009 allows the waiver of all copayments for any expanded preventive services in order to ensure TRICARE beneficiaries have access to free coverage of preventive health services, in parity with the Affordable Care Act. This proposal includes permanent codification of this provision, along with the authority to waive statutorily imposed pharmacy cost shares for preventive services, including free coverage of contraceptive services. This added statutory flexibility will also exemplify DoD's ongoing efforts to move from "health care to health."

Budgetary Implications: By expanding TRICARE's preventive benefit, government payments will increase. The preventive services proposed for adoption and used to estimate this proposal are outlined in the table below. We assume an implementation date of October 1, 2017 (FY 18), the estimated cost increase are as follows:

Estimated TRICARE Costs to Expand TRICARE Covered Preventive Healthcare Services

	FY 2018	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Flexibility in adopting USPSTF Recommendations	$8.2	$4.3	$4.4	$4.5	$4.7	Defense Health Program – Operation and	01	010	0807723

						Maintenance			
Covering Well-Child care through age 17	$3.1	$3.2	$3.3	$3.4	$3.6	Defense Health Program – Operation and Maintenance	01	010	0807723
Smoking Cessation and over-the-counter drugs (e.g. aspirin, vitamin D, folic acid)	$0.2	$0.2	$0.2	$0.2	$0.3	Defense Health Program - Operation and Maintenance	01	010	0807723
Pregnancy prevention	$13.8	$14.3	$14.8	$15.3	$15.8	Defense Health Program Operation and Maintenance	01	010	0807723
Women's preventive services	$6.3	$6.6	$6.8	$7.0	$7.2	Defense Health Program – Operation and Maintenance	01	010	0807723
Screening gestational diabetes with no copayment	$0.1	$0.1	$0.1	$0.1	$0.1	Defense Health Program – Operation and Maintenance	01	010	0807723
TOTAL	$31.7	$28.7	$29.6	$30.5	$31.7				

Changes to Existing Law:

1. This proposal would make the following changes to section 1074d of title 10, Untied States Code:

§1074d. Certain primary and preventive health care services

(a) Services Available.-(1) Female members and former members of the uniformed services entitled to medical care under section 1074 or 1074a of this title shall also be entitled to primary and preventive health care services for women as part of such medical care. The services described in paragraphs (1) and (2) of subsection (b) shall be provided under such procedures and at such intervals as the Secretary of Defense shall prescribe.

(2) Male members and former members of the uniformed services entitled to medical care under section 1074 or 1074a of this title shall also be entitled to preventive health care screening for colon or prostate cancer at such intervals and using such screening methods as the administering Secretaries consider appropriate.

(b) Additional preventive health care services.–(1) In addition to the preventive services provided under subsection (a), persons entitled to medical care under this chapter shall also be entitled, to the extent practicable, to the coverage of preventive health services comparable to the coverage required to be provided by a group health plan and a health insurance issuer offering group or individual health insurance coverage under section 2713 of the Public Health Service Act (42 U.S.C. 300gg-13). Such entitlement shall supersede any otherwise applicable exclusions to the contrary.

(2) Persons entitled to medical care under this chapter shall also be entitled to other evidence-based preventive health care services and screenings, as may be prescribed in regulations by the Secretary of Defense.

(3) The Secretary shall prescribe regulations to—

(A) waive all copayments under sections 1074g, 1079(b), and 1086(b) of this title for preventive services provided pursuant to this subsection for all beneficiaries who would otherwise pay copayments; and

(B) ensure that a beneficiary pays nothing for such preventive services during a year without regard to whether the beneficiary has paid the amount necessary to cover the beneficiary's deductible for the year.

(~~b~~**c**) Definition.-In this section, the term "primary and preventive health care services for women" means health care services, including related counseling services, provided to women with respect to the following:

(1) Cervical cancer screening.
(2) Breast cancer screening.
(3) Comprehensive obstetrical and gynecological care, including care related to pregnancy and the prevention of pregnancy.
(4) Infertility and sexually transmitted diseases, including prevention.
(5) Menopause, including hormone replacement therapy and counseling regarding the benefits and risks of hormone replacement therapy.
(6) Physical or psychological conditions arising out of acts of sexual violence.
(7) Gynecological cancers.
(8) Colon cancer screening, at the intervals and using the screening methods prescribed under subsection (a)(2).

2. This proposal would also make the following changes to Section 1077(a) of title 10, United States Code:

§ 1077. Medical care for dependents: authorized care in facilities of the uniformed services

(a) * * *

(16) * * *

(17) * * *

(18) The additional preventive health services described in section 1074d(b) of this title.

3. This proposal would also make the following changes to Section 1079 of title 10, United States Code:

§ 1079. Contracts for medical care for spouses and children: plans

(a) * * *

(2) Consistent with such regulations as the Secretary of Defense may prescribe regarding the content of health promotion and disease prevention visits, the schedule and method of cervical cancer screenings and breast cancer screenings, the schedule and

method of colon and prostate cancer screenings, and the types and schedule of immunizations, health promotion and disease prevention visits and immunizations (including the preventive care and screenings required pursuant to section 1074d(b) of this title) may be provided to dependents.~~schedule of immunizations~~

~~(A) for dependents under six years of age, both health promotion and disease prevention visits and immunizations may be provided; and~~

~~(B) for dependents six years of age or older, health promotion and disease prevention visits may be provided in connection with immunizations or with diagnostic or preventive cervical and breast cancer screenings or colon and prostate cancer screenings.~~

Section 705 would provide the Defense Health Agency (DHA) in collaboration with the Office of Personnel Management (OPM) the feasibility of offering individuals who meet the eligibility requirements in subsection (a) the opportunity to purchase vision and dental insurance currently available to Federal employees under the Federal Employees Dental and Vision Insurance Program (FEDVIP).

Currently, the TRICARE Basic program offers a limited benefit for optical exams and glasses. But FEDVIP offers group vision insurance with a choice of carriers and plans on an enrollee-pays-all (no cost to the Government) basis. An overview of the program is available at http://www.opm.gov/healthcare-insurance/insurance-overview/vision-insurance-overview.pdf

The TRICARE Retiree Dental Program (TRDP), required by statute, offers a dental benefit for members who have retired from the active or reserve components. The program is administered under a competitively acquired contract, and no uniformed dentists or dental treatment facilities are used. This proposal would provide DHA and OPM the authority for TRICARE-eligible retirees and their family members to participate in the dental program offered under the Federal Employees Dental/Vision Program (FEDVIP) administered by OPM.

Allowing individuals who meet the eligibility requirements in subsection (a) to participate in FEDVIP (vision benefits for all non-ADSMS and dental benefits for retirees and their families) will extend their vision and dental coverage and provide them access to highly regarded benefits. Feedback from beneficiaries led us to believe that offering additional coverage would prove to increase customer satisfaction. Additionally, we believe this will increase the health and wellness of TRICARE beneficiaries.

OPM and DoD currently collaborate to allow active and retired members of the uniformed services and their qualified relatives to purchase long term care insurance through the Federal Long Term Care Insurance Program administered by OPM. We believe this precedence to be encouraging for the FEDVIP proposed collaboration.

Budget Implications: In regards to Vision, this proposal would allow specified beneficiaries to use OPM's Vision Plan in which premiums cover the cost of the program's enrollment and premium functions along with OPM's administration fee. We estimate participation in this program would require minimal administrative costs in FY17 for the DoD. Health care savings would result from the fact that TRICARE would become a secondary payer for routine eye

exams for persons who chose to enroll in one of OPM's vision plans. Additionally, we anticipate it will also create a larger insured group, facilitate more competitive premiums for all FEDVIP participants, and leverage OPM's existing contract administration infrastructure.

In regards to dental, this proposal would provide TRICARE-eligible retirees and their family members the opportunity to access a dental plan with a significantly higher annual maximum benefit and a lower premium cost than available under the current TRDP, while giving the Department an opportunity to eliminate the government employee staffing costs of procuring and administering a TRDP contract.

RESOURCE REQUIREMENTS ($M)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
DHP	$0.2	($2.6)	($5.4)	($7.4)	($7.7)	DHP O&M	BA-01	010	0807741
Total	$0.2	($2.6)	($5.4)	($7.4)	($7.7)				

TRICARE Beneficiaries Cost Implications: In regards to vision, we anticipate that TRICARE beneficiaries will pay approximately the same premiums offered to Federal employees. 2014 FEDVIP monthly premiums for vision coverage range from $6.22 for "Self" (standard option) up to $40.26 for "Self and Family" (high option). The program also includes a "self plus one" enrollment option.

FEDVIP offers the opportunity to purchase dental insurance on a group basis from among a number of plans with competitive premiums and with no pre-existing condition limitations on enrollment. All carriers offer a High Plan option, with a couple offering Standard Options as well. "Self" enrollment premiums for the High Option plans range, based on state and location, from $20.40 to $50.68 per month. "Self Plus One" enrollment premiums range from $41.43 to $101.36 per month. "Self and Family" enrollment premiums range from $62.16 to $152.01 per month.

Changes to Existing Law: This section would make the following changes in provisions of existing law:

5 U.S.C. 8951. Definitions

In this chapter:

(1) The term "employee" means an employee defined under section 8901(1) and an employee of the District of Columbia courts.

(2) The terms "annuitant", "member of family", and "dependent" have the meanings as such terms are defined under paragraphs (3), (5), and (9), respectively, of section 8901.

(3) The term "eligible individual" refers to an individual described in ~~paragraph (1) or (2)~~paragraph (1), (2), or (8), without regard to whether the individual is enrolled in a health benefits plan under chapter 89.

(4) The term "Office" means the Office of Personnel Management.

(5) The term "qualified company" means a company (or consortium of companies or an employee organization defined under section 8901(8)) that offers indemnity, preferred provider organization, health maintenance organization, or discount dental programs and if required is licensed to issue applicable coverage in any number of States, taking any subsidiaries of such a company into account (and, in the case of a consortium, considering the member companies and any subsidiaries thereof, collectively).

(6) The term "employee organization" means an association or other organization of employees which is national in scope, or in which membership is open to all employees of a Government agency who are eligible to enroll in a health benefits plan under chapter 89.

(7) The term "State" includes the District of Columbia.

(8) The term “covered TRICARE-eligible individual” means an individual entitled to dental care under chapter 55 of title 10, pursuant to section 1076c of such title, that the Secretary of Defense determines should be a covered TRICARE-eligible individual for purposes of this chapter.

5 U.S.C. 8958. Premiums

(a) Each eligible individual obtaining supplemental dental coverage under this chapter shall be responsible for 100 percent of the premiums for such coverage.

(b) The Office shall prescribe regulations specifying the terms and conditions under which individuals are required to pay the premiums for enrollment.

(c) The amount necessary to pay the premiums for enrollment may-

(1) in the case of an employee, be withheld from the pay of such an employee; ~~or~~

(2) in the case of an annuitant, be withheld from the annuity of such an annuitant~~.~~; or

(3) in the case of a covered TRICARE-eligible individual, be withheld from—

(A) the pay (including retired pay) of the appropriate eligible member of the uniformed services; or

(B) the annuity paid to such individual due to the death of an eligible member of the uniformed services.

(d) All amounts withheld under this section shall be paid directly to the qualified company.

(e) Each participating qualified company shall maintain accounting records that contain such information and reports as the Office may require.

(f)(1) The Employee Health Benefits Fund is available, without fiscal year limitation, for reasonable expenses incurred by the Office in administering this chapter before the first day of the first contract period, including reasonable implementation costs.

(2)(A) There is established in the Employees Health Benefits Fund a Dental Benefits Administrative Account, which shall be available to the Office, without fiscal year limitation, to

defray reasonable expenses incurred by the Office in administering this chapter after the start of the first contract year.

(B) A contract under this chapter shall include appropriate provisions under which the qualified company involved shall, during each year, make such periodic contributions to the Dental Benefits Administrative Account as necessary to ensure that the reasonable anticipated expenses of the Office in administering this chapter during such year are defrayed.

5 U.S.C. 8981. Definitions

In this chapter:

(1) The term "employee" means an employee defined under section 8901(1) and an employee of the District of Columbia courts.

(2) The terms "annuitant", "member of family", and "dependent" have the meanings as such terms are defined under paragraphs (3), (5), and (9), respectively, of section 8901.

(3) The term "eligible individual" refers to an individual described in ~~paragraph (1) or (2)~~paragraph (1), (2), or (8), without regard to whether the individual is enrolled in a health benefits plan under chapter 89.

(4) The term "Office" means the Office of Personnel Management.

(5) The term "qualified company" means a company (or consortium of companies or an employee organization defined under section 8901(8)) that offers indemnity, preferred provider organization, health maintenance organization, or discount vision programs and if required is licensed to issue applicable coverage in any number of States, taking any subsidiaries of such a company into account (and, in the case of a consortium, considering the member companies and any subsidiaries thereof, collectively).

(6) The term "employee organization" means an association or other organization of employees which is national in scope, or in which membership is open to all employees of a Government agency who are eligible to enroll in a health benefits plan under chapter 89.

(7) The term "State" includes the District of Columbia.

(8) The term “covered TRICARE-eligible individual” means an individual entitled to medical care under chapter 55 of title 10, pursuant to section 1076d, 1076e, 1079(a), 1086(c), or 1086(d) of such title, that the Secretary of Defense determines should be a covered TRICARE-eligible individual for purposes of this chapter, but excluding individuals covered under section 1110b of such title.

5 U.S.C. 8988. Premiums

(a) Each eligible individual obtaining supplemental vision coverage under this chapter shall be responsible for 100 percent of the premiums for such coverage.

(b) The Office shall prescribe regulations specifying the terms and conditions under which individuals are required to pay the premiums for enrollment.

(c) The amount necessary to pay the premiums for enrollment may-

(1) in the case of an employee, be withheld from the pay of such an employee; ~~or~~

(2) in the case of an annuitant, be withheld from the annuity of such an annuitant~~.~~; or

(3) in the case of a covered TRICARE-eligible individual, be withheld from—

(A) the pay (including retired pay) of the appropriate eligible member of the uniformed services; or

(B) the annuity paid to such individual due to the death of an eligible member of the uniformed services.

(d) All amounts withheld under this section shall be paid directly to the qualified company.

(e) Each participating qualified company shall maintain accounting records that contain such information and reports as the Office may require.

(f)(1) The Employee Health Benefits Fund is available, without fiscal year limitation, for reasonable expenses incurred by the Office in administering this chapter before the first day of the first contract period, including reasonable implementation costs.

(2)(A) There is established in the Employees Health Benefits Fund a Vision Benefits Administrative Account, which shall be available to the Office, without fiscal year limitation, to defray reasonable expenses incurred by the Office in administering this chapter after the start of the first contract year.

(B) A contract under this chapter shall include appropriate provisions under which the qualified company involved shall, during each year, make such periodic contributions to the Vision Benefits Administrative Account as necessary to ensure that the reasonable anticipated expenses of the Office in administering this chapter during such year are defrayed.

10 U.S.C. 1076c. Dental Insurance plan: certain retirees and their surviving spouses and other dependents

~~(a) Requirement for plan.—The Secretary of Defense, in consultation with other administering Secretaries, shall establish a dental insurance plan for retirees of the uniformed services, certain unremarried surviving spouses, and dependents in accordance with this section.~~

(a) Requirement for plan.—(1) The Secretary of Defense shall establish a dental insurance plan for retirees of the uniformed services, certain unremarried surviving spouses, and dependents in accordance with this section.

(2) The Secretary may satisfy the requirement under paragraph (1) by entering into an agreement with the Office of Personnel Management to allow eligible beneficiaries to enroll in an insurance plan through the Federal Employees Health Benefit Plan that provides benefits similar to those benefits required to be provided under subsection (d).

* * * * *

Section 706 would reduce the administrative costs of the TRICARE program by removing an annual requirement that the managed care support contractors (MCSCs) generate and mail a renewal letter to all beneficiaries enrolled in TRICARE Prime. The Contractors

accomplish this function for the Defense Health Agency per contract and the TRICARE Operations Manual, Chapter 6, Section 1, Paragraph 4.2.

The written notification sent to the TRICARE Prime beneficiaries paying monthly is a reminder of their TRICARE Prime enrollment status and pending automatic re-enrollment unless the beneficiary formally advises their MCSC they are declining re-enrollment. The TRICARE program has been implemented for over twenty years, and information concerning the TRICARE Prime enrollment option and processes have been widely disseminated and publically available. The written notification of pending automatic TRICARE Prime re-enrollment is no longer necessary for those beneficiaries paying their enrollment monthly via payroll allotment, credit card or electronic funds transfer from a checking or savings account because they must take affirmative steps to disenroll and stop the automatic payments. And, they can dis-enroll at any time throughout the year. For those beneficiaries paying annually or quarterly, they also receive the renewal notice and appropriate billing statements.

The annual written notification advising enrolled beneficiaries of their TRICARE Prime enrollment has been required since the TRICARE program triple-option design was implemented in the mid-1990s per 10 USC 1097a. At the time, TRICARE's triple option constituted a significant change from the prior CHAMPUS fee-for-service program. TRICARE provided beneficiaries, for the first time, three health plan options: TRICARE Standard (the continuation of CHAMPUS fee-for-service coverage), TRICARE Extra (the new Preferred Provider Organization option) and TRICARE Prime (the new Health Maintenance Organization option). The TRICARE Prime renewal notice served as a reminder of the member's TRICARE Prime enrollment and, for the TRICARE Prime enrolled retired beneficiaries, the requirement to pay the enrollment fee. The TRICARE Standard and Extra beneficiaries do not receive any type of notification.

Today, the TRICARE Prime enrollment fees are finalized by the Defense Health Agency and announced several months prior to the October 1st renewal date. Once approved, the fees are immediately posted to the TRICARE.mil website, which generates emails to the beneficiaries enrolled at the website. The Department also announces the new fees using: (1) social media (Facebook, Twitter, Google+, *etc*.), (2) newsletters and web site postings by the multiple military and veterans service organizations, (3) news media articles, (4) verbally presented to the military and service organizations who attend the Defense Health Agency Strategic Communication conference calls, and (5) Defense Finance and Account Service (DFAS) newsletters.

The renewal notice is also not needed for TRICARE beneficiaries who just transitioned from active duty to retired status. They are provided information about the TRICARE Prime options as part of their retirement processing. This process ensures the transitioning service member are informed of their TRICARE options and that, unlike active duty beneficiaries, retired beneficiaries must pay the TRICARE Prime enrollment fee before enrolling themselves and/or eligible family members. They are also advised that the fees are subject to change annually based on the Cost of Living Allowance (COLA) adjustment made to military retired pay. Payment options are explained at that time.

Also, unlike commercial health plans, TRICARE allows beneficiaries to change their health plan option at any time during year, assuming the beneficiary has not been locked-out or TRICARE Prime due to non-payment of premium or voluntary dis-enrollment. For example, a TRICARE Prime beneficiary may terminate their TRICARE Prime enrollment at any time and begin using TRICARE Standard as their primary health plan. Likewise, a TRICARE Standard beneficiary may enroll in TRICARE Prime at any time during the year. After twenty-plus years of offering the same TRICARE plan options, the renewal letters are expensive to provide to about 5.1 million beneficiaries and are no longer needed to provide notice that is widely available from numerous publically-available sources and otherwise disseminated directly to beneficiaries. All TRICARE beneficiaries are also reminded of which plan option they are using when they receive an explanation of benefit following a TRICARE payment for services.

The annual renewal notices would be discontinued effective Fiscal Year 2017 (October 1, 2016). The requirement to provide the renewal notices will be removed from the TRICARE Manuals and managed care support contracts. Beneficiaries paying their enrollment fees quarterly or annually will continue to receive appropriate billing statements.

Budget Implications: Eliminating the annual TRICARE Prime renewal letter to all enrollees significantly reduces the costs of administering TRICARE Prime. The Defense Health Agency estimates that the costs of generating and printing correspondence, stuffing envelopes and mailing the letters as approximately $1.03 per letter. There are currently 5.1 million TRICARE Prime enrollees. The letters are mailed to households, estimated to be about 2.3 million. Eliminating the annual renewal letter is estimated to save the TRICARE program about $2.4 million per year.

RESOURCE REQUIREMENTS ($M)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
DHP	(2.4)	(2.4)	(2.4)	(2.4)	(2.4)	Defense Health Program – Operation and Maintenance	01	010	0807723
Total	(2.4)	(2.4)	(2.4)	(2.4)	(2.4)				

This change will have no impact on the TRICARE beneficiaries. Each beneficiary has the option of using TRICARE Standard, TRICARE Extra or TRICARE Prime, and can change their chosen plan at any time during the year, assuming they are not “locked-out” of TRICARE Prime for non-payment of premium or for voluntary disenrollment. Information concerning

TRICARE options generally, and TRICARE Prime enrollment fee requirements in particular, are widely available from numerous publically-available sources and otherwise disseminated directly to beneficiaries.

Changes to Existing Law: This section would make the following changes to section 1097a of title 10, United States Code:

§1097a. TRICARE Prime: automatic enrollments; payment options

(a) Automatic Enrollment of Certain Dependents. –(1) In the case of a dependent of a member of the uniformed services who is entitled to medical and dental care under section 1076(a)(2)(A) of this title and resides in a catchment area in which TRICARE Prime is offered, the Secretary–

(A) shall automatically enroll the dependent in TRICARE Prime if the member is in pay grade E-4 or below; and

(B) may automatically enroll the dependent in TRICARE Prime if the member is in pay grade E-5 or higher.

(2) Whenever a dependent of member is enrolled in TRICARE Prime under paragraph (1), the Secretary concerned shall provide written notice of the enrollment to the member.

(3) The enrollment of a dependent of the member may be terminated by the member or the dependent at any time.

(b) Automatic Renewal of Enrollments of Covered Beneficiaries.~~–(1)~~ An enrollment of a covered beneficiary in TRICARE Prime shall be automatically renewed upon the expiration of the enrollment unless the renewal is declined.

~~(2) No later than 15 days before the expiration date for an enrollment of a covered beneficiary in TRICARE Prime, the Secretary concerned shall–~~

~~(A) transmit a written notification of the pending expiration and renewal of enrollment to the covered beneficiary or, in the case of a dependent of member of the uniformed services, to the member; and~~

~~(B) afford the beneficiary or member, as the case may be, an opportunity to decline the renewal of enrollment.~~

* * * * *

Subtitle B—Health Care Administration

Section 711 would allow the Uniformed Services University of the Health Sciences (USUHS), if properly directed and resourced, to assist the Medical Education and Training Campus (METC) in awarding academic credit for education and training programs to the enlisted technical medical personnel in the various Services.

Within the civilian and enlisted military medical communities, the standard for non-physician health care support personnel has evolved to include certificates, certifications, and undergraduate degrees. The METC hosts forty-nine enlisted medical training programs at its Tri-Service academic campus located at Joint Base San Antonio, Fort Sam Houston, Texas. In response to the needs of the Services, METC endeavors to ensure military personnel receive recognizable credit for civilian comparable military education and training. METC therefore

requests a limited academic affiliation with USUHS for support of undergraduate enlisted medical education. Current statute limits METC and USUHS collaboration.

Headquartering USUHS in the District of Columbia will ensure the Secretary has flexibility in using existing Federal medical resources outside of the National Capital Region to augment a METC affiliation. By including certificate and certification, as well as undergraduate degree programs, the Secretary will have the necessary authority to affiliate existing METC medical education and training programs with USUHS and create new programs as appropriate. Implementation of such authority would depend on the yet to be determined scope of services and the allocation of resources.

The proposal is consistent with DoD and Presidential vision and initiatives in that granting undergraduate college credit, certificates, and conferring degrees offers a recruiting and retention tool for the Services, provides the Service Member a valuable skill set which transitions into civilian life (thus reducing post service unemployment), and provisions additional health care assets for the nation.

After intensive study, a pilot program leading to awarding an undergraduate degree through an affiliation between METC and USUHS has been elucidated. The proposed pilot will in no way jeopardize any benefit of either institution's existing accreditations or affiliations. The 4 programs selected for the pilot are of the highest METC priority to protect requisite certifications and are the most representative of the value added nature of the proposed affiliation. The proposed pilot programs are:

1) Medical Laboratory Technician (Navy)
2) Neurodiagnostic Technologist (Navy and Air Force)
3) Surgical Technologist (Army, Navy, Air Force)
4) Nuclear Medicine Technologist (Army, Navy, Air Force)

The pilot program will involve approximately100 faculty and 1,400 students in its first iteration. Key elements are:

1) USUHS will create a Bachelor of Science in Health Science degree program for allied health professionals to be executed via concurrent/dual enrollment with METC and all affiliates (e.g. Community College of the Air Force).
2) USUHS will recognize, via transfer, the general education hours documented by the METC or by transcript review from other DoD approved institutions.
3) USUHS will provide University appointments for faculty teaching University affiliated technical courses within the METC in accordance with existing accreditation requirements.
4) METC technical hours will satisfy the requirement for residency hours towards the USUHS baccalaureate degree.
5) Remaining hours for degree completion will come via recognition of hours acquired through voluntary education and transferred into the University from DoD approved institutions.
6) USUHS, in collaboration with METC, will provide degrees, certificates of completion, and transcripts/student records upon request of students and other institutions per existing and subsequent regionally and programmatically accredited mechanisms.

This affiliation will permit awarding undergraduate college credit and health science degrees for education and training completed at METC and appoint credentialed METC instructors as members of the USUHS faculty. The cost projections of a limited affiliation pilot program is referenced in Budgetary Implications.

Budgetary Implications: The costs associated with this proposal are based upon a limited METC USUHS affiliation pilot study of 4 enlisted medical education programs. The resource requirements are provided in the following tables for the affiliating institutions followed by a discussion of potential direct and indirect offsets. The resources reflected in the table below are funded within the FY 2017 President's Budget.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
DHP	1.079210	.836321	.852219	.876893	.885998	Defense Health Program – Operation and Maintenance	01	010	0807781
DHP	1.379715	1.275971	1.300848	1.319248	1.343771	Defense Health Program – Operation and Maintenance	01	010	0806721
DHP	.073918	.024969	.025469	.025978	.026498	Defense Health Program – Operation and Maintenance	01	010	0806276
Total	2.532843	2.137261	2.178536	2.222119	2.256267				

The pilot program requires 5 Full Time Equivalent (FTE) personnel, 1 (one) .5 FTE and 2 (two) .25 FTEs totaling 6 Full Time Equivalent personnel.

NUMBER OF PERSONNEL AFFECTED (FTE)					
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**
#	6	6	6	6	6

The resource costs associated this legislative change and pilot program implementation would be partially offset by avoiding costs currently spent on certificates and certifications, and undergraduate degrees. Some METC students use Voluntary Education dollars (tuition assistance and GI Bill) to supplement their medical education and training credits and earn their certificate and/or undergraduate degree. Under this affiliation, USUHS will certify undergraduate credit not currently possible, avoiding up to $1,200,000 in Voluntary Education dollars annually. Additionally, USUHS credit evaluation will alleviate the requirement for an outside agency's evaluation saving approximately $23,000 annually. USUHS will also ensure

students receive a certificate at a reduced cost and USUHS will provide staff to serve as course Program Directors when necessary potentially saving $800,000 annually.

ESTIMATED AFFILIATION COST AVOIDANCE ($MILLIONS)					
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**
Voluntary Education	1.192500	1.204425	1.216469	1.228634	1.240920
Credit Evaluation	.023338	.023571	.023807	.024045	.024286
Certificates	.613440	.619574	.625770	.632028	.638348
USUHS Staff Program Directors	.199344	.201337	.203351	.205384	.207438
Total	2.028622	2.048907	2.069397	2.090091	2.110992

Changes to Existing Law: This proposal would make the following changes to title 10, United States Code:

§ 2112. Establishment

~~(a) There is hereby authorized to be established within 25 miles of the District of Columbia a Uniformed Services University of the Health Sciences (hereinafter in this chapter referred to as the "University"), at a site or sites to be selected by the Secretary of Defense, with authority to grant appropriate advanced degrees. It shall be so organized as to graduate not less than 100 medical students annually.~~

(a)(1) There is a Uniformed Services University of the Health Sciences (in this chapter referred to as the 'University') with authority to grant appropriate certificates and certifications, undergraduate degrees, and advanced degrees. The University shall be so organized as to graduate not less than 100 medical students annually.

(2) The headquarters of the University shall be at a site or sites selected by the Secretary of Defense within 25 miles of the District of Columbia.

* * * * *

§2112a. Continued operation of University

~~(a) Closure Prohibited. The University may not be closed.~~

~~(b) Personnel Strength. During the five-year period beginning on October 1, 1996, the personnel staffing levels for the University may not be reduced below the personnel staffing levels for the University as of October 1, 1993.~~

The University may not be closed,

* * * * *

§ 2113. Administration of University

(a) ** *

* * * * * * *

(d) The Secretary may negotiate agreements with agencies of the Federal Government to utilize on a reimbursable basis appropriate existing Federal medical resources ~~located in or near the District of Columbia~~. Under such agreements the facilities concerned will retain their identities and basic missions. The Secretary may negotiate affiliation agreements with an accredited university or universities ~~in or near the District of Columbia~~. Such agreements may include provisions for payments for educational services provided students participating in Department of Defense educational programs. ~~The Secretary may enter into an agreement under which the University would become part of a national university of health sciences should such an institution be established in the vicinity of the District of Columbia.~~

(e) The Secretary of Defense may establish the following educational programs at the University:

(1) Postdoctoral, postgraduate, and technological institutes.

(2) A graduate school of nursing.

(3) Other schools or programs<u>, including certificate and certification and undergraduate degree programs,</u> that the Secretary determines necessary in order to operate the University in a cost-effective manner.

* * * * * * *

Section 712 would amend chapter 55 of title 10, United States Code, to permit members of the armed forces and civilian employees of the Department of Defense who are licensed veterinary professionals to provide veterinary care and services at any location in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States, regardless of where such veterinary professional or the patient are located, so long as the practice is within the scope of the authorized Federal duties. This proposal would also extend this permission to National Guard personnel performing training or duty under section 502(f) of title 32, United States Code, in response to an actual or potential disaster or emergency.

Budget Implications: This proposal has no budget requirements or implications as this proposal is solely dealing with licensure outside the confines of an installation when directed by SECDEF to perform that mission within the realms of Defense Support of Civil Authorities.

Changes to Existing Law: This proposal would amend chapter 55 of title 10, U.S. Code, by inserting the new section which is set forth above.

TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

Section 801 would amend section 196 of title 10, United States Code, to limit application of the existing law to the Major Range and Test Facility Base (MRTFB) and those test and

evaluation facilities that are used to support the acquisition programs of the Department of Defense. These changes align the statute with how it read when originally enacted in the National Defense Authorization Act for Fiscal Year 2003 and Department of Defense Instruction (DODI) 3200.18, while also adding an express definition of the term "significant change."

Additionally, amendments are proposed to address inconsistent language that was added to Section 196 by section 214 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 and to prevent unintended consequences such as broadening the scope and reporting requirements to small laboratory and educational test and evaluation facilities.

The budget certification period for Service-proposed Test and Evaluation budgets would be amended to be limited to the budget year plus one succeeding year and not the Future Years Defense Program. This change is appropriate due to budget uncertainty associated with the out years.

With regard to significant changes to the MRTFB, Secretaries of the military departments or department heads will be required to submit implementation plans to the Test Resource Management Center Director, who in turn will submit to the Secretary of Defense an annual report containing comments of the Director with respect to each implementation plan.

Budget Implications: There would be a cost avoidance to implement the provisions of the proposal, although savings would be minimal. Instead of a need for a fully researched and vetted business case analysis for modifications to test and evaluation facilities, a shorter implementation plan would be used.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Air Force	-0.01	-0.01	-0.01	-0.01	-0.01	Research, Development, Test and Evaluation, Air Force	06	098	0605807F
Army does not intend to use, which would have been funded in the following account: Research, Development, Test and Evaluation, Army.									
Navy does not intend to use, which would have been funded in the following account: Research, Development, Test and Evaluation, Navy.									
Total	-0.01	-0.01	-0.01	-0.01	-0.01	Research, Development, Test and Evaluation, Air Force	06	098	0605807F

Changes to Existing Law: This section would make the following changes in provisions of existing law:

TITLE 10, UNITED STATES CODE

§ 196. Department of Defense Test Resource Management Center

(a) ESTABLISHMENT AS DEPARTMENT OF DEFENSE FIELD ACTIVITY.—The Secretary of Defense shall establish within the Department of Defense under section 191 of this title a Department of Defense Test Resource Management Center (hereinafter in this section referred to as the "Center"). The Secretary shall designate the Center as a Department of Defense Field Activity.

(b) DIRECTOR AND DEPUTY DIRECTOR.—(1) At the head of the Center shall be a Director, selected by the Secretary from among individuals who have substantial experience in the field of test and evaluation. A commissioned officer serving as the Director, while so serving, holds the grade of lieutenant general or, in the case of an officer of the Navy, vice admiral. A civilian officer or employee serving as the Director, while so serving, has a pay level equivalent in grade to lieutenant general.

(2) There shall be a Deputy Director of the Center, selected by the Secretary from among individuals who have substantial experience in the field of test and evaluation. The Deputy Director shall act for, and exercise the powers of, the Director when the Director is disabled or the position of Director is vacant.

(c) DUTIES OF DIRECTOR.—(1) The Director shall have the following duties:

(A) To review and provide oversight of proposed Department of Defense budgets and expenditures for—

(i) the test and evaluation facilities and resources of the Major Range and Test Facility Base of the Department of Defense; and

(ii) all other test and evaluation facilities and resources within and outside of the Department of Defense, other than budgets and expenditures for activities described in section 139(i) of this title.

(B) To review proposed significant changes to the test and evaluation facilities and resources ~~of~~ that comprise the Major Range and Test Facility Base and other facilities and resources used to support the acquisition programs of the Department of Defense ~~including with respect to the expansion, divestment, consolidation, or curtailment of activities,~~ before they are implemented by the Secretaries of the military departments or the heads of the Defense Agencies with test and evaluation responsibilities and advise the Secretary of Defense and the Under Secretary of Acquisition, Technology, and Logistics of the impact of such changes on the adequacy of such test and evaluation facilities and resources to meet the test and evaluation requirements of the Department.

(C) To complete and maintain the strategic plan required by subsection (d).

(D) To review proposed budgets under subsection (e) and submit reports and certifications required by such subsection.

(E) To administer the Central Test and Evaluation Investment Program and the program of the Department of Defense for test and evaluation science and technology.

(2) The Director shall have access to such records and data of the Department of Defense (including the appropriate records and data of each military department and Defense Agency) that are necessary in order to carry out the duties of the Director under this section.

(d) STRATEGIC PLAN FOR DEPARTMENT OF DEFENSE TEST AND EVALUATION RESOURCES.—(1) Not less often than once every two fiscal years, the Director, in coordination with the Director of Operational Test and Evaluation, the Secretaries of the military departments, and the heads of Defense Agencies with test and evaluation responsibilities, shall complete a

strategic plan reflecting the needs of the Department of Defense with respect to test and evaluation facilities and resources. Each such strategic plan shall cover the period of ten fiscal years beginning with the fiscal year in which the plan is submitted under paragraph (3). The strategic plan shall be based on a comprehensive review of the test and evaluation requirements of the Department and the adequacy of the test and evaluation facilities and resources of the Department to meet those requirements.

(2) The strategic plan shall include the following:

(A) An assessment of the test and evaluation requirements of the Department for the period covered by the plan.

(B) An identification of performance measures associated with the successful achievement of test and evaluation objectives for the period covered by the plan.

(C) An assessment of the test and evaluation facilities and resources that will be needed to meet such requirements and satisfy such performance measures.

(D) An assessment of the current state of the test and evaluation facilities and resources of the Department.

(E) An assessment of implementation plans and analyses ~~and business case analyses~~ supporting any significant ~~modification of~~ changes to the test and evaluation facilities and resources of the Department projected, proposed, or recommended by the Secretary of a military department or the head of a Defense Agency for such period~~, including with respect to the expansion, divestment, consolidation, or curtailment of activities~~.

(F) An itemization of acquisitions, upgrades, and improvements necessary to ensure that the test and evaluation facilities and resources of the Department are adequate to meet such requirements and satisfy such performance measures.

(G) An assessment of the budgetary resources necessary to implement such acquisitions, upgrades, and improvements.

(3) Upon completing a strategic plan under paragraph (1), the Director shall submit to the Secretary of Defense a report on that plan. The report shall include the plan and a description of the review on which the plan is based.

(4) Not later than 60 days after the date on which the report is submitted under paragraph (3), the Secretary of Defense shall transmit to the Committee on Armed Services and Committee on Appropriations of the Senate and the Committee on Armed Services and Committee on Appropriations of the House of Representatives the report, together with any comments with respect to the report that the Secretary considers appropriate.

(e) CERTIFICATION OF BUDGETS.—(1) The Secretary of Defense, acting through the Under Secretary of Defense (Comptroller), shall require that the Secretary of each military department and the head of each Defense Agency with test and evaluation responsibilities transmit such Secretary's or Defense Agency head's proposed budget for test and evaluation activities for a fiscal year and for the period covered by the future defense program submitted to Congress under section 221 of this title for that fiscal year to the Director of the Center for review under paragraph (2) before submitting such proposed budget to the Under Secretary of Defense (Comptroller).

(2)(A) The Director of the Center shall review each proposed budget transmitted under paragraph (1) and shall, not later than January 31 of the year preceding the fiscal year for which such budgets are proposed, submit to the Secretary of Defense a report containing the comments of the Director with respect to all such proposed budgets, together with the certification of the

Director as to whether ~~such proposed budgets~~ the proposed budget year plus one succeeding year are adequate.

(B) The Director shall also submit, together with such report and such certification, an additional certification as to whether such proposed budgets provide balanced support for such strategic plan.

(3) If the Director does not certify any one or more of the proposed budgets for the budget year plus one succeeding year, the ~~The~~ Secretary of Defense shall, not later than March 31 of the year preceding the fiscal year for which such budgets are proposed, submit to Congress a report on those ~~proposed~~ budgets ~~which the Director has not certified under paragraph (2)(A) to be adequate~~. The report shall include the following matters:

(A) A discussion of the actions that the Secretary proposes to take, together with any recommended legislation that the Secretary considers appropriate, to address the inadequacy of the proposed budgets.

(B) Any additional comments that the Secretary considers appropriate regarding the inadequacy of the proposed budgets.

(f) APPROVAL OF CERTAIN ~~MODIFICATIONS~~ CHANGES.—(1) The Secretary of a military department or the head of a Defense Agency with test and evaluation responsibilities may not implement, without the Director's approval, a projected, proposed, or recommended significant ~~modification of~~ change to the test and evaluation facilities and resources that comprise the Major Range and Test Facility Base and other facilities and resources used to support the acquisition programs of the Department of Defense. The Secretary or the head, as the case may be, shall submit to the Director an implementation plan and analysis which supports such change. Such analysis shall include cost considerations. ~~of the Department, including with respect to the expansion, divestment, consolidation, or curtailment of activities, until--~~

~~(A) the secretary or the head, as the case may be, submits to the Director a business case analysis for such modification; and~~

~~(B) the Director reviews such analysis and approves such modification.~~

(2) The Director shall submit to the Secretary of Defense an annual report containing the comments of the Director with respect to each ~~business case analysis~~ implementation plan and analysis reviewed under paragraph (1)~~(B)~~ during the year covered by the report.

(g) SUPERVISION OF DIRECTOR BY UNDER SECRETARY.—The Director of the Center shall be subject to the supervision of the Under Secretary of Defense for Acquisition, Technology, and Logistics. The Director shall report directly to the Under Secretary, without the interposition of any other supervising official.

(h) ADMINISTRATIVE SUPPORT OF CENTER.—The Secretary of Defense shall provide the Director with administrative support adequate for carrying out the Director's responsibilities under this section. The Secretary shall provide the support out of the headquarters activities of the Department or any other activities that the Secretary considers appropriate.

(i) DEFINITIONS.—In this section~~,~~:

(1) The term "Major Range and Test Facility Base" means the test and evaluation facilities and resources that are designated by the Secretary of Defense as facilities and resources comprising the Major Range and Test Facility Base.

(2) The term "significant change" means—

(A) any action that will limit or preclude a test and evaluation capability from fully performing its intended purpose;

(B) any action that affects the ability of the Department to conduct test and

evaluation in a timely or cost-effective manner; or

(C) any expansion or addition that develops a new significant test capability.

Section 802 would waive the requirement for the Head of Agency (HOA) to notify the congressional defense committees of the decision not later than 30 days after the date of the decision to acquire a higher quantity of an end item (for tactical missiles and munitions annual procurements only) than is specified in a law described in subsection (a). The respective HOA would be the decision authority for the acquisition of additional end items, to be documented in a Determination and Findings (D&F) document maintained by the HOA. In these instances, no congressional notification would be required.

Virtually all of the Department's primary tactical missiles and munition programs are currently well below their approved inventory objectives and most are current warfighting priorities. The aggregate procurement effects of Foreign Military Sales (FMS) business, multi-Service procurements, and Overseas Contingency Operations (OCO) additions to the base budget procurements, coupled with manufacturing efficiencies and better buying power actions, routinely drive economies of scale which permit the procurement of end items above the annual budgeted quantity without required funding above the total appropriated amount.

All of the Department's primary tactical missile and munition program end items are being procured under other than full and open competition. Given this, the ability to acquire an additional quantity of these end items is still limited by the DoD Federal Management Regulation ("DoD FMR") Vol2a, Ch 1, Sec 010204 and DFARS Part 207.7003. That is, the acquisition of additional quantities is limited to not more than 10 percent of the quantity identified in a Justification & Approval (J&A) prepared in accordance with 10 USC § 2304 and Federal Acquisition Regulation ("FAR") Part 6. These restrictions will remain in full effect for these programs.

This proposal would have an immediate impact in providing administrative staffing relief for the Service Acquisition staffs who are required to process D&F packages up to the HOA level for tactical missile and munition procurements to comply with the requirement for Congressional notification within 30 days of the decision. It would also reduce the number of congressional notifications to be processed by the congressional defense committees.

Budget Implications: There are no budgetary implications for this proposal. The primary benefit would be administrative streamlining. Department analysis shows these notification packages require 37-40 hours to process each, up through HOA review and signature. This will be a considerable process improvement for the Service Acquisition staffs, eliminating a significant staffing burden in working annual Congressional notifications for nominal increases in procured missile and munition quantities over the budgeted levels.

Changes to Existing Law: This proposal would make the following change to section 2308 of title 10, United States Code:

§ 2308. Buy-to-budget acquisition: end items

(a) AUTHORITY TO ACQUIRE ADDITIONAL END ITEMS.—Using funds available to the Department of Defense for the acquisition of an end item, the head of an agency making the

acquisition may acquire a higher quantity of the end item than the quantity specified for the end item in a law providing for the funding of that acquisition if that head of an agency makes each of the following findings:

(1) The agency has an established requirement for the end item that is expected to remain substantially unchanged throughout the period of the acquisition.

(2) It is possible to acquire the higher quantity of the end item without additional funding because of production efficiencies or other cost reductions.

(3) The amount of the funds used for the acquisition of the higher quantity of the end item will not exceed the amount provided under that law for the acquisition of the end item.

(4) The amount so provided is sufficient to ensure that each unit of the end item acquired within the higher quantity is fully funded as a complete end item.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of this section. The regulations shall include, at a minimum, the following:

(1) The level of approval within the Department of Defense that is required for a decision to acquire a higher quantity of an end item under subsection (a).

(2) Authority (subject to subsection (a)) to acquire up to 10 percent more than the quantity of an end item approved in a justification and approval of the use of procedures other than competitive procedures for the acquisition of the end item under section 2304 of this title.

(c) NOTIFICATION OF CONGRESS.—The head of an agency is not required to notify Congress in advance regarding a decision under the authority of this section to acquire a higher quantity of an end item than is specified in a law described in subsection (a), but shall notify the congressional defense committees of the decision not later than 30 days after the date of the decision. **However, no such notification is required when the acquisition of a higher quantity of an end item is for an end item under a primary tactical missile program or a munition program.**

(d) WAIVER BY OTHER LAW.—A provision of law may not be construed as prohibiting the acquisition of a higher quantity of an end item under this section unless that provision of law—

(1) specifically refers to this section; and

(2) specifically states that the acquisition of the higher quantity of the end item is prohibited notwithstanding the authority provided in this section.

(e) DEFINITIONS.—(1) For the purposes of this section, a quantity of an end item shall be considered specified in a law if the quantity is specified either in a provision of that law or in any related representation that is set forth separately in a table, chart, or explanatory text included in a joint explanatory statement or governing committee report accompanying the law.

(2) In this section:

(A) The term “end item” means a production product assembled, completed, and ready for issue or deployment.

(B) The term "head of an agency" means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force.

Section 803 would amend section 1903(a) of title 41, United States Code, to expand the permissible uses of the special emergency procurement authorities under section 1903 to include: 1) support of international disaster assistance and 2) support of a national emergency or natural disaster relief efforts in the United States as defined by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122). Expansion of this authority is necessary to enhance the flexibility of the Department of Defense (DoD) and other agencies to effectively support emergencies both inside and outside the United States.

Section 1903 provides for increased micro-purchase and simplified acquisition thresholds in certain cases. Under current law, these procurement flexibilities are limited to contingency operations and activities related to the defense against or recovery from nuclear, biological, chemical or radiological attack. This proposal would extend the availability of special emergency procurement authorities – such as increased micro-purchase and simplified acquisition thresholds, as those terms are defined in the Stafford Act — when carrying out international disaster assistance and when supporting national emergencies or major disaster relief efforts inside the United States.

Having the ability to use the increased micro-purchase and simplified acquisition thresholds under section 1903 is critical for DoD and other agencies by providing alternative ways of procuring items when supporting these assistance efforts or specified national emergencies or natural disaster relief efforts inside the United States.

This proposal would not, however, change how or when humanitarian assistance is provided or how or when national emergencies or natural disaster efforts are carried out.

Budgetary Implications: This proposal would amend the applicability of special emergency procurement authorities and there would be no budget implications.

Changes to Existing Law: This proposal would make the following changes to section 1903(a) of title 41, United States Code:

§ 1903. Special emergency procurement authority

(a) APPLICABILITY—The authorities provided in subsections (b) and (c) apply with respect to a procurement of property or services by or for an executive agency that the head of the executive agency determines are to be used—

(1) in support of a contingency operation (as defined in section 101 (a) of title 10); ~~or~~

(2) to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States~~.~~ ;

(3) in support of a request from the Secretary of State or the Administrator of the Agency for International Development to facilitate the provision of international disaster assistance pursuant to the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.); or

(4) in support of an emergency or major disaster (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)).

(b) INCREASED THRESHOLDS AND LIMITATION.—For a procurement to which this section applies under subsection (a)—

(1) the amount specified in section 1902(a), (d), and (e) of this title shall be deemed to be—

(A) $15,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States; and

(B) $25,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States;

(2) the term "simplified acquisition threshold" means—

(A) $250,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States; and

(B) $1,000,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States; and

(3) the $5,000,000 limitation in sections 1901(a)(2) and 3305(a)(2) of this title and section 2304(g)(1)(B) of title 10 is deemed to be $10,000,000.

(c) AUTHORITY TO TREAT PROPERTY OR SERVICE AS COMMERCIAL ITEM.—

(1) IN GENERAL.—The head of an executive agency carrying out a procurement of property or a service to which this section applies under subsection (a)(2) may treat the property or service as a commercial item for the purpose of carrying out the procurement.

(2) CERTAIN CONTRACTS NOT EXEMPT FROM STANDARDS OR REQUIREMENTS.—A contract in an amount of more than $15,000,000 that is awarded on a sole source basis for an item or service treated as a commercial item under paragraph (1) is not exempt from—

(A) cost accounting standards prescribed under section 1502 of this title; or

(B) cost or pricing data requirements (commonly referred to as truth in negotiating) under chapter 35 of this title and section 2306a of title 10.

Section 804 would remove the retroactive application requirements of section 803 of the National Defense Authorization Act (NDAA) for Fiscal Year 2012. Section 803 expanded the existing executive compensation cap requirements for DoD, NASA, and Coast Guard contracts, to all contractor employees. The Section 803 compensation cap applies to compensation costs incurred after January 1, 2012 for contracts entered into before, on, or after December 31, 2011. When the cap is applied to contracts entered into before [December 31, 2011] a constructive change to those contracts is created which gives rise to a claim against the Government.

The implementation of section 803 as written is similar to the implementation of section 808 of the National Defense Authorization Act for Fiscal Year 1998, which imposed a cap on allowable costs for senior executive compensation both prospectively and retroactively to existing contracts. In litigation on the application of the requirements of section 808, the courts held that the requirements of section 808 breached contracts that pre-dated the statutory date of enactment. See General Dynamics vs. US, 47 Fed Cl. 514 (Sept 15, 2000).

There is a high probability that the retroactive implementation of the requirements of section 803 would be found to violate the terms of FAR clause 52.216-7, Allowable Cost and

Payment, in contracts existing prior to the date of the enactment of the Act, thereby creating a Government breach of contract. Based on the legal precedence established during the implementation of similar requirements under section 808 of the National Defense Authorization Act for Fiscal Year 1998, the Department of Justice has cautioned DoD that the Government may be liable for affected costs, plus associated interest penalties and costs associated with contractor claims.

Budgetary Implications: This proposal would not increase costs to the Government. There are no budgetary implications outside of avoiding the costs of the filing and processing of the claims for breach of contract, and associated interest penalties.

Changes to Existing Law: This proposal would make the following changes to section 803 of the National Defense Authorization Act for Fiscal Year 2012 (P.L. 112-81).

SEC. 803. EXTENSION OF APPLICABILITY OF THE SENIOR EXECUTIVE BENCHMARK COMPENSATION AMOUNT FOR PURPOSES OF ALLOWABLE COST LIMITATIONS UNDER DEFENSE CONTRACTS.

(a) CERTAIN COMPENSATION NOT ALLOWABLE UNDER DEFENSE CONTRACTS.—Subsection (e)(1)(P) of section 2324 of title 10, United States Code, is amended—

(1) by striking “senior executives of contractors” and inserting “any contractor employee”; and

(2) by adding before the period at the end the following: “, except that the Secretary of Defense may establish one or more narrowly targeted exceptions for scientists and engineers upon a determination that such exceptions are needed to ensure that the Department of Defense has continued access to needed skills and capabilities”.

(b) CONFORMING AMENDMENT.—Subsection (l) of such section is amended by striking paragraph (5).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to costs of compensation incurred after January 1, 2012, under contracts entered into on or after December 31, 2011. ~~The amendments made by this section—~~

~~(1) shall be implemented in the Federal Acquisition Regulation within 180 days after the date of the enactment of this Act; and~~

~~(2) shall apply with respect to costs of compensation incurred after January 1, 2012, under contracts entered into before, on, or after, but not before, the date of the enactment of this Act.~~

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Section 901 would amend sections 2481, 2483, 2484, and 2487 of title 10, United States Code, to provide the Department of Defense the flexibility to optimize management practices across the Defense resale system and allow the Defense Commissary Agency (DeCA) to begin a phased transition that reduces reliance on appropriated funding without reducing benefits to the systems’ patrons or the revenue generated by nonappropriated fund entities or instrumentalities of the Department for the morale, welfare, and recreation (MWR) of members of the Armed Forces.

The Department believes that the improved business practices enabled by this legislation will make it possible to deliver the same level of service and savings to commissary patrons as the current system at substantially reduced cost to the taxpayer. Towards this end, the Department requires legislative changes to allow greater flexibility related to how products are sourced, where they are sold, and how they are priced in the commissaries. The current, inward-facing pricing model of the commissaries, which requires that all products be sold with a uniform surcharge of 5 percent over cost, does not incentivize efficient business management practices. A more flexible, outward-facing (commercial) pricing approach, which focuses on generating revenues through reduced cost of goods sold rather than the amount of the surcharge, could achieve the same level of savings for service members, retirees, and their families, while incentivizing efficiencies that provide significant savings.

This proposal adds a new sentence at the end of subsection (a) of section 2481. The new sentence recognizes the current reality of multiple exchange systems. It is intended to allow the current statutory usage of the singular "exchange system" to remain unchanged while accommodating the current real-world existence of multiple exchange systems.

This proposal also adds a new paragraph within subsection (c) of section 2481, directing the Secretary of Defense to develop and implement a comprehensive strategy to optimize management practices across the defense commissary and exchange systems that would reduce reliance on appropriated funding without reducing patron benefits. Savings that are produced as a result of these efforts would be appropriately shared, via appropriate contracts or agreements. Institutionalization of the optimized management practices would make it possible to better manage capital and operating expenditures, and achieve additional back-office efficiencies across the Defense resale system.

This proposal adds a sentence within subsection (c) of section 2483, specifying that appropriated amounts which cover the expenses of operating the defense commissary system may also be supplemented by additional funds derived from improved management practices and an alternative pricing program.

The proposal inserts a new subsection after subsection (h) of section 2484, authorizing the Secretary of Defense to carry out flexible pricing program on a permanent basis. Under this authority, the commissaries may utilize alternative product pricing, while ensuring that the level of savings to commissary patrons is reasonably consistent with the level of savings prior to the implementation of the alternative pricing program. The flexible pricing program would be evaluated against specific, measurable benchmarks and a documented baseline level of savings. This alternative pricing flexibility would allow stores to establish prices in response to market conditions and customer demand, as opposed to the current "sale-at-cost-plus-surcharge" model that constrains sales margins and limits potential savings benefits across disparate geographic markets.

If the Secretary determines that the benchmarks for success (including required savings levels) have been met after a period of at least six months, a new subsection would further authorize the Secretary to convert the commissary system to a nonappropriated fund entity or instrumentality, with operating expenses financed in whole or in part by receipts from the sale of

products and the sale of services. This additional flexibility is necessary to enable the phased transition that ultimately reduces the commissary system's reliance on appropriated funding. In particular, conversion of the Defense commissary system to a non-appropriated fund entity or instrumentality is necessary to enable the commissaries to develop common business systems and common business practices with the exchange systems. Non-appropriated fund status will also give the commissary system greater flexibility in contracting and hiring, enabling the commissaries to readily enter commercial-type contracts and to bring on specialized, temporary, or surge workforces on an as-needed bases. In the event that the defense commissary system is converted to a nonappropriated fund entity or instrumentality, subsection (f) of this proposal clarifies the status of its assets and funds.

Appropriated funds will still be required to ensure that the savings requirements outlined in subsection (i) are met. Those appropriated funds would be considered to be obligated when transferred to the commissaries so that they could be treated as nonappropriated funds when expended to pay the salaries for nonappropriated employees or other commissary expenses. Subsection (j) further authorizes the Secretary of Defense to identify positions of employees in the defense commissary system who are paid with appropriated funds whose status may be converted to the status of an employee of a nonappropriated fund entity or instrumentality as provided in section 2491(c) for employees in morale, welfare, and recreation programs. The subsection stipulates that no commissary employee shall suffer a reduction in pay as commissaries are converted to nonappropriated fund entities or instrumentalities, thereby protecting the current workforce's compensation benefit during any transition.

The proposal also inserts a subsection after subsection (b) of section 2487, which in turn, would redesignate subsection (c) as subsection (d). The new subsection would authorize the Secretary of Defense to establish common business processes, practices, and systems to exploit synergies between the operations of the defense commissary system and the exchange system and to optimize the operations of the defense retail system as a whole and the benefits provided by the commissaries and exchanges, including authorizing the use of both appropriated and nonappropriated funds on contracts or agreements for the acquisition of common business systems for the Defense resale system or to exploit acquisition synergies in obtaining logistical services, supplies, and resale goods and services.

Budget Implications: The table below details resource requirements associated with this proposal. The resources reflected in the table below are funded within the FY 2017 President's Budget.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriations From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
DeCA	(8)	(8)	(191)	(358)	(512)	Working Capital Fund, Defense Commissary Agency	20	ES12	
Total	(8)	(8)	(191)	(358)	(512)	--	--	--	--

Development of the optimization strategy and implementation of the full range of business process enhancements enabled by this proposal, in addition to a concerted effort to exploit synergies and realize operational efficiency efforts across the entire Defense resale system, is expected to decrease the requirement for appropriated funds across the Future Years Defense Program by $1,077,000,000. The Department expects to achieve additional efficiencies through business improvements that do not require legislation.

Changes to Existing Law: The proposal would make the following changes to 10 U.S.C. 2463, 2481, 2483, 2484, and 2487:

TITLE 10, UNITED STATES CODE

* * * * * * *

CHAPTER 146—CONTRACTING FOR PERFORMANCE OF CIVILIAN COMMERCIAL OR INDUSTRIAL TYPE FUNCTIONS AMENDMENTS

* * * * * * *

§ 2643. Commissary and exchange services: transportation overseas

(a) TRANSPORTATION OPTIONS.—The Secretary of Defense shall authorize the officials responsible for operation of commissaries and military exchanges to negotiate directly with private carriers for the most cost-effective transportation of commissary and exchange supplies to destinations outside the continental United States without relying on the Air Mobility Command, the Military Sealift Command, or the Military Traffic Management Command. Section 2631 of this title, regarding the preference for vessels of the United States or belonging to the United States in the transportation of supplies by sea, shall apply to the negotiation of contracts for sea-borne transportation under the authority of this section.

(b) PAYMENT OF TRANSPORTATION COSTS.—Section 2483(b)(5) of this title, regarding the use of appropriated funds to cover the expenses of operating commissary stores, shall apply to the transportation of commissary supplies and products. Appropriated funds for the Department of Defense shall also be used to cover the expenses of transporting exchange supplies and products to destinations outside the continental United States. <u>Such appropriated funds may be supplemented with additional funds derived from improved management practices implemented pursuant to sections 2481(c)(3) and 2487(c) of this title</u>.

* * * * * * *

CHAPTER 147—COMMISSARIES AND EXCHANGES AND OTHER MORALE, WELFARE, AND RECREATION ACTIVITIES

* * * * * * *

§2481. Defense commissary and exchange systems: existence and purpose

(a) SEPARATE SYSTEMS.—The Secretary of Defense shall operate, in the manner provided by this chapter and other provisions of law, a world-wide system of commissary stores and a separate world-wide system of exchange stores. The stores of each system may sell, at reduced prices, food and other merchandise to members of the uniformed services on active duty, members of the uniformed services entitled to retired pay, dependents of such members, and persons authorized to use the system under chapter 54 of this title. Any reference in this chapter to “the exchange system” shall be treated as referring to each separate administrative entity within the Department of Defense through which the Secretary of Defense has implemented the requirement under this subsection for a world-wide system of exchange stores.

(b) PURPOSE OF SYSTEMS.—The defense commissary system and the exchange system are intended to enhance the quality of life of members of the uniformed services, retired members, and dependents of such members, and to support military readiness, recruitment, and retention.

(c) OVERSIGHT.—(1) The Secretary of Defense shall designate a senior official of the Department of Defense to oversee the operation of both the defense resale commissary system and the exchange system.

(2) The Secretary of Defense shall establish an executive governing body to provide advice to the senior official designated under paragraph (1) regarding the operation of the defense commissary and exchange systems and to ensure the complementary operation of the systems.

(3)(A) The Secretary of Defense shall develop and implement a comprehensive strategy to optimize management practices across the defense commissary system and the exchange system that reduce reliance of those systems on appropriated funding without reducing benefits to the patrons of those systems or the revenue generated by nonappropriated fund entities or instrumentalities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.

(B) The Secretary shall ensure that savings generated due to such optimization practices are shared by the defense commissary system and the exchange system through contracts or agreements that appropriately reflect the participation of the systems in the development and implementation of such practices.

(d) REDUCED PRICES DEFINED.—In this section, the term “reduced prices” means prices for food and other merchandise determined using the price setting process specified in section 2484 of this title.

* * * * * * *

§2483. Commissary stores: use of appropriated funds to cover operating expenses

(a) OPERATION OF AGENCY AND SYSTEM.—Except as otherwise provided in this title, the operation of the Defense Commissary Agency and the defense commissary system shall be funded using such amounts as are appropriated for such purpose.

(b) OPERATING EXPENSES OF COMMISSARY STORES.—Appropriated funds shall be used to cover the expenses of operating commissary stores and central product processing facilities of the defense commissary system. For purposes of this subsection, operating expenses include the following:

(1) Salaries and wages of employees of the United States, host nations, and contractors supporting commissary store operations.

(2) Utilities.

(3) Communications.

(4) Operating supplies and services.

(5) Second destination transportation costs within or outside the United States.

(6) Any cost associated with above-store-level management or other indirect support of a commissary store or a central product processing facility, including equipment maintenance and information technology costs.

(c) SUPPLEMENTAL FUNDS FOR COMMISSARY OPERATIONS.—Amounts appropriated to cover the expenses of operating the Defense Commissary Agency and the defense commissary system may be supplemented with additional funds from manufacturers' coupon redemption fees, handling fees for tobacco products, and other amounts received as reimbursement for other support activities provided by commissary activities. <u>Such appropriated amounts may also be supplemented with additional funds derived from improved management practices implemented pursuant to sections 2481(c)(3) and 2487(c) of this title and the alternative pricing program implemented pursuant to section 2484(i) of this title.</u>

* * * * * * *

§2484. Commissary stores: merchandise that may be sold; uniform surcharges and pricing

(a) IN GENERAL.—As provided in section 2481(a) of this title, commissary stores are intended to be similar to commercial grocery stores and may sell merchandise similar to that sold in commercial grocery stores.

(b) AUTHORIZED COMMISSARY MERCHANDISE CATEGORIES.—Merchandise sold in, at, or by commissary stores may include items in the following categories:

(1) Meat, poultry, seafood, and fresh-water fish.

(2) Nonalcoholic beverages.

(3) Produce.

(4) Grocery food, whether stored chilled, frozen, or at room temperature.

(5) Dairy products.

(6) Bakery and delicatessen items.

(7) Nonfood grocery items.

(8) Tobacco products.

(9) Health and beauty aids.

(10) Magazines and periodicals.

(c) INCLUSION OF OTHER MERCHANDISE ITEMS.—(1) The Secretary of Defense may authorize the sale in, at, or by commissary stores of merchandise not covered by a category

specified in subsection (b). The Secretary shall notify Congress of all merchandise authorized for sale pursuant to this paragraph, as well as the removal of any such authorization.

(2) Notwithstanding paragraph (1), the Department of Defense military resale system shall continue to maintain the exclusive right to operate convenience stores, shopettes, and troop stores, including such stores established to support contingency operations.

(3)(A) A military exchange shall be the vendor for the sale of tobacco products in commissary stores and may be the vendor for such merchandise as may be authorized for sale in commissary stores under paragraph (1). Except as provided in subparagraph (B), subsections (d) and (e) shall not apply to the pricing of such an item when a military exchange serves as the vendor of the item. Commissary store and exchange prices shall be comparable for such an item.

(B) When a military exchange is the vendor of tobacco products or other merchandise authorized for sale in a commissary store under paragraph (1), any revenue above the cost of procuring the merchandise shall be allocated as if the revenue were a uniform sales price surcharge described in subsection (d).

(d) UNIFORM SALES PRICE SURCHARGE.—The Secretary of Defense shall apply a uniform surcharge equal to five percent on the sales prices established under subsection (e) for each item of merchandise sold in, at, or by commissary stores.

(e) SALES PRICE ESTABLISHMENT.—(1) The Secretary of Defense shall establish the sales price of each item of merchandise sold in, at, or by commissary stores at the level that will recoup the actual product cost of the item.

(2) Any change in the pricing policies for merchandise sold in, at, or by commissary stores shall not take effect until the Secretary of Defense submits written notice of the proposed change to Congress and a period of 90 days of continuous session of Congress expires following the date on which notice was received. For purposes of this paragraph, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment or recess of more than three days to a day certain are excluded in a computation of such 90-day period.

(3) The sales price of merchandise and services sold in, at, or by commissary stores shall be adjusted to cover the following:

(A) The cost of first destination commercial transportation of the merchandise in the United States to the place of sale.

(B) The actual or estimated cost of shrinkage, spoilage, and pilferage of merchandise under the control of commissary stores.

(f) PROCUREMENT OF COMMERCIAL ITEMS USING PROCEDURES OTHER THAN COMPETITIVE PROCEDURES.—The Secretary of Defense may use the exception provided in section 2304(c)(5) of this title for the procurement of any commercial item (including brand-name and generic items) for resale in, at, or by commissary stores.

(g) SPECIAL RULES FOR CERTAIN MERCHANDISE.—(1) Notwithstanding the general requirement that merchandise sold in, at, or by commissary stores be commissary store inventory, the Secretary of Defense may authorize the sale of tobacco products as noncommissary store inventory. Except as provided in paragraph (2), subsections (d) and (e) shall not apply to the pricing of such merchandise items.

(2) When tobacco products are authorized for sale in a commissary store as noncommissary store inventory, any revenue above the cost of procuring the tobacco products shall be allocated as if the revenue were a uniform sales price surcharge described in subsection (d).

(h) USE OF SURCHARGE FOR CONSTRUCTION, REPAIR, IMPROVEMENT, AND MAINTENANCE.—(1)(A)The Secretary of Defense may use the proceeds from the surcharges imposed under subsection (d) only—

(i) to acquire (including acquisition by lease), construct, convert, expand, improve, repair, maintain, and equip the physical infrastructure of commissary stores and central product processing facilities of the defense commissary system; and

(ii) to cover environmental evaluation and construction costs related to activities described in clause (i), including costs for surveys, administration, overhead, planning, and design.

(B) In subparagraph (A), the term "physical infrastructure" includes real property, utilities, and equipment (installed and free standing and including computer equipment), necessary to provide a complete and usable commissary store or central product processing facility.

(2)(A) The Secretary of Defense may authorize a nonappropriated fund instrumentality of the United States to enter into a contract for construction of a shopping mall or similar facility for a commissary store and one or more nonappropriated fund instrumentality activities. The Secretary may use the proceeds of surcharges under subsection (d) to reimburse the nonappropriated fund instrumentality for the portion of the cost of the contract that is attributable to construction of the commissary store or to pay the contractor directly for that portion of such cost.

(B) In subparagraph (A), the term "construction", with respect to a facility, includes acquisition, conversion, expansion, installation, or other improvement of the facility.

(3)(A) The Secretary of Defense may use the proceeds derived from surcharges imposed under subsection (d) in connection with sales of commissary merchandise through initiatives described in subparagraph (B) to offset the cost of such initiatives.

(B) Subparagraph (A) applies with respect to initiatives, utilizing temporary and mobile equipment, intended to provide members of reserve components, retired members, and other persons eligible for commissary benefits, but without reasonable access to commissary stores, improved access to commissary merchandise.

(4) The Secretary of Defense, with the approval of the Director of the Office of Management and Budget, may obligate anticipated proceeds from the surcharges under subsection (d) for any use specified in paragraph (1), (2), or (3), without regard to fiscal year limitations, if the Secretary determines that such obligation is necessary to carry out any use of such adjustments or surcharges specified in such paragraph.

(5) Revenues received by the Secretary of Defense from the following sources or activities of commissary store facilities shall be available for the purposes set forth in paragraphs (1), (2), and (3):

(A) Sale of recyclable materials.

(B) Sale of excess and surplus property.

(C) License fees.

(D) Royalties.

(E) Fees paid by sources of products in order to obtain favorable display of the products for resale, known as business related management fees.

(i) ALTERNATIVE PRICING PROGRAM.—(1) The Secretary is authorized to establish an alternative pricing program pursuant to which prices may be established in response to market conditions and customer demand, in accordance with the requirements of this subsection. Notwithstanding the amount of the uniform surcharge assessed in subsection (d), the Secretary may provide for an alternative surcharge of not more than 5 percent of sales proceeds under such alternative pricing program to be made available for the purposes specified in subsection (h).

(2) Before establishing an alternative pricing program under this subsection, the Secretary shall establish the following:

(A) Specific, measurable benchmarks for success in the provision of high quality grocery merchandise, discount savings to patrons, and levels of customer satisfaction while achieving savings for the Department of Defense.

(B) A baseline of overall savings to patrons achieved by commissary stores prior to the initiation of the alternative pricing program, based on a comparison of prices charged by those stores on a regional basis with prices charged by relevant local competitors for a representative market basket of goods.

(3) The Secretary shall ensure that the defense commissary system implements the alternative pricing program by conducting price comparisons using the methodology established for paragraph (2)(B) and adjusting pricing as necessary to ensure that pricing in the alternative pricing program achieves overall savings to patrons that are reasonably consistent with the baseline savings established for the relevant region pursuant to such paragraph.

(j) CONVERSION TO NONAPPROPRIATED FUND ENTITY OR INSTRUMENTALITY.—(1) If the Secretary determines that the alternative pricing program has met the benchmarks for success established pursuant to subsection (i)(2)(A) and the savings requirements established pursuant to subsection (i)(3) over a period of at least six months, the Secretary may convert the defense commissary system to a nonappropriated fund entity or instrumentality, with operating expenses financed in whole or in part by receipts from the sale of products and the sale of services. Upon such conversion, appropriated funds shall be transferred to the defense commissary system only in accordance with paragraph (2) or section 2491 of this title. The requirements of section 2483 shall not apply to the defense commissary system operating as a nonappropriated fund entity or instrumentality.

(2) If the Secretary determines that the defense commissary system operating as a nonappropriated fund entity or instrumentality is likely to incur a loss in any fiscal year as a result of compliance with the savings requirement established in subsection (i), the Secretary shall authorize a transfer of appropriated funds available for such purpose to the commissary system in an amount sufficient to offset the anticipated loss. Any funds so transferred shall be considered to be nonappropriated funds for such purpose.

(3) The Secretary of Defense may identify positions of employees in the defense commissary system who are paid with appropriated funds whose status may be converted to the status of an employee of a nonappropriated fund entity or instrumentality. The status and conversion of such employees shall be addressed as provided in section 2491(c) for employees in morale, welfare, and recreation programs. No individual who is an employee of the defense

commissary system as of the date of the enactment of this subsection shall suffer any loss of or decrease in pay as a result of the conversion.

* * * * * * *

§2487. Relationship between defense commissary system and exchange stores system

(a) SEPARATE OPERATION OF SYSTEMS.—(1) Except as provided in paragraph (2), the defense commissary system and the exchange stores system shall be operated as separate systems of the Department of Defense.

(2) Paragraph (1) does not apply to the following:

(A) Combined exchange and commissary stores operated under the authority provided by section 2489 of this title.

(B) NEXMART stores of the Navy Exchange Service Command established before October 1, 2003.

(b) CONSOLIDATION OR OTHER ORGANIZATIONAL CHANGES OF DEFENSE RETAIL SYSTEMS.—(1) The operation and administration of the defense retail systems may not be consolidated or otherwise merged unless the consolidation or merger is specifically authorized by an Act of Congress.

(2) In this subsection, the term "defense retail systems" means the defense commissary system and exchange stores system and other revenue-generating facilities operated by nonappropriated fund instrumentalities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.

(c) COMMON BUSINESS PRACTICES.—(1) Notwithstanding subsections (a) and (b), the Secretary of Defense may establish common business processes, practices and systems—

(A) to exploit synergies between the operations of the defense commissary system and the exchange system; and

(B) to optimize the operations of the defense retail systems as a whole and the benefits provided by the commissaries and exchanges.

(2) The Secretary may authorize the defense commissary system and the exchange system to enter into contracts or other agreements—

(A) for products and services that are shared by the defense commissary system and the exchange system; and

(B) for the acquisition of supplies, resale goods, and services on behalf of both the defense commissary system and the exchange system.

(3) For the purpose of a contract or agreement authorized under paragraph (2), the Secretary may—

(A) use funds appropriated pursuant to section 2483 of this title to reimburse a nonappropriated fund entity or instrumentality for the portion of the cost of a contract or agreement entered by the nonappropriated fund entity or instrumentality that is attributable to the defense commissary system; and

(B) authorize the defense commissary system to accept reimbursement from a nonappropriated fund entity or instrumentality for the portion of the cost of a contract or agreement entered by the defense commissary system that is attributable to the nonappropriated fund entity or instrumentality.

(~~c~~d) ACCESS OF EXCHANGE STORES SYSTEM TO FEDERAL FINANCING BANK.—To facilitate the provision of in-store credit to patrons of the exchange stores system while reducing the costs of providing such credit, the Army and Air Force Exchange Service, Navy Exchange Service Command, and Marine Corps exchanges may issue and sell their obligations to the Federal Financing Bank as provided in section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. 2285).

Section 902 would update the authority of the Secretary of Defense to appoint law enforcement personnel to protect the Pentagon Reservation and Department of Defense (DoD) activities in the National Capital Region (NCR), and to fix the rates of basic pay for law enforcement and security personnel whose permanent duty station is the Pentagon Reservation. It would amend 10 U.S.C. 2674 to codify expanded powers and authorities for law enforcement officers and agents appointed under Section 2674, and to update the Secretary's current, administrative pay-setting authorities for civilian law enforcement and security personnel assigned to the Pentagon Reservation. The proposal removes the Secretary's existing statutory authority to appoint contract personnel to perform law enforcement functions for DoD activities in the NCR.

The Pentagon Force Protection Agency (PFPA) is a civilian Defense Agency with the mission to protect the people, facilities, infrastructure, and other resources for the Pentagon Reservation and for assigned DoD-occupied facilities and activities with the NCR. In 2002, the Deputy Secretary of Defense established PFPA as a Defense Agency, in order to provide the capability necessary to protect DoD Headquarters following the September 11, 2001 attacks and the subsequent anthrax attacks in the NCR. PFPA has over 850 law enforcement officers and agents who protect more than 100 facilities and investigate violations of federal law and regulations in three states, one district, and more than ten jurisdictional boundaries, pursuant to the 10 U.S.C. 2674 law enforcement and security responsibilities of the Secretary of Defense, which are delegated to the Director, PFPA. PFPA does not utilize military personnel in law enforcement functions.

As the DoD Headquarters, site of the National Military Command Center, and location of the Department's civilian leadership, the Pentagon is an international icon for the defense of our Nation. The Pentagon Reservation is the target of terrorist organizations, criminals, foreign intelligence and tradecraft activity, violent offenders, emotionally disturbed persons, and documented and attempted attacks; accordingly, PFPA responds to and investigates suspicious persons and communications to perform its mission.

Current law confines PFPA's delegated law enforcement and security functions to NCR-located property that is occupied by, or under the jurisdiction, custody, and control of the DoD. Conversely, law enforcement officers and agents throughout the Federal Government are commonly prescribed expanded authority to conduct Federal law enforcement functions on or off their Agencies' specified property; these include the power to make arrests for offenses against the United States, serve warrants, and conduct responses and investigations beyond designated jurisdictional boundaries. Such authority effectively enables other law enforcement officers such

as the Federal Protective Service (FPS) and U.S. Secret Service Uniformed Division (USSS/UD) to investigate the off-site aspects of on-site crimes and threats.

The comprehensive and effective protection of a given jurisdiction requires the ability of assigned law enforcement officers and agents to exercise limited law enforcement authority without regard to jurisdictional boundaries, in order to achieve their chartered responsibilities. For instance, crimes against and threats to the Pentagon and other PFPA-protected facilities usually emanate from individuals who reside, work, or have affiliations beyond PFPA-protected property. Absent the off-site authority afforded to the law enforcement officers of the aforementioned Agencies with commensurate missions, PFPA is unduly restricted and/or delayed in performing its mission, and is left to request and rely upon the availability of assistance from other Federal, State, and local law enforcement agencies who have competing priorities.

The complexity and sophistication of the current threat environment, as well as National, Department of Justice, and DoD-wide guidance, challenge security agencies to detect, investigate, and intercept threats at their source, before those threats act to harm the Nation's interests. Two 2010 shooting incidents at or including the Pentagon (Bedell, Melaku) and recent security incidents at other prominent Washington-area facilities (e.g., White House, Capitol Building, Washington Navy Yard) demonstrate the potentially devastating impact of an individual coming from off-site to do harm at a symbol of national power and governance. The key to defusing such threats is the effort to identify, investigate, and intercept the threat before it culminates in an attack; this capability requires the authority to enforce violations of Federal laws, investigate sources of suspicion, and address threats to protected facilities whether they occur on or off of Agency-occupied facilities.

Under subsection (a) of this proposal, the Secretary's authority to protect the buildings, grounds, and property located in the NCR would include expanded powers and authorities for law enforcement officers and agents appointed under Section 2674. The proposal is necessary to update these powers and authorities to mirror those codified in 10 U.S.C. 2672. If granted expanded off-site investigative authority with respect to offenses that may have been or are threatened to be committed against NCR properties that are occupied by, or under the jurisdiction, custody, and control of DoD, PFPA will continue its practice of active and early coordination with other Federal, State, and local law enforcement. Furthermore, both PFPA's charter (DoD Instruction 5105.68), and DoDI 5505.16 ("Criminal Investigations by Personnel Who Are Not Assigned to a Defense Criminal Investigation Organization"), require PFPA to promptly notify the servicing Defense Criminal Investigative Organization (DCIO[3]) at the onset of all investigations initiated on Military Service members, DoD civilians, or DoD contractors who are identified as suspects or victims of criminal activity. The proposed amendments to 10 U.S.C. 2674 contain language specifying that 10 U.S.C. 2674, in the amended form, would not preclude or limit any other authority of any DCIO.

[3] DoDI 5505.16 defines DCIOs as the U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, the Air Force Office of Special Investigations, and the Defense Criminal Investigative Service.

The Secretary of Defense has prescribed regulations which preclude PFPA's investigation where another Federal LE Agency has primary investigative authority. DoDI 5505.16 states, "DCIOs have [i]nvestigative responsibility regarding all personnel, property, and resources assigned to their respective Military Services." DoDI 5105.68 (PFPA Charter) states, "Unless the Secretary or the Deputy Secretary of Defense directs otherwise, the law enforcement responsibilities this directive assigns do not replace or supersede responsibilities currently assigned to the U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, or the Air Force Office of Special Investigations." DoDD 5525.07 establishes Department of Justice/DoD policy "with regard to the investigation and prosecution of criminal matters over which the two Departments have jurisdiction." The proposed legislation does not modify these provisions; in fact, the proposal contains language that the sought investigative authorities be carried out in accordance with regulations prescribed by the Secretary of Defense and approved by the Attorney General.

PFPA is an active collaborator in the joint environment of protective intelligence and criminal investigations. For example, PFPA:

- Routinely exchanges protective intelligence information with Federal, state, and local agencies, including DCIOs, Arlington County Police Department, Virginia State Police, Metro Transit Police, Metropolitan Police Department, Federal Bureau of Investigation, Central Intelligence Agency, U.S. Capitol Police, Federal Protective Service, U.S. Marshal Service, U.S. Secret Service, and Department of State Diplomatic Security Service.
- Has multiple agents assigned to Federal Bureau of Investigation-led Joint Terrorism Task Forces (JTTFs).
- Participated with the Army Criminal Investigation Command (CID), Naval Criminal Investigative Service (NCIS), and Air Force Office of Special Investigations (AF OSI) in the Office of the Secretary of Defense Protection Review (2011-2013), which made recommendations to the Special Assistant to the Secretary of Defense on opportunities to clarify protection-related responsibilities, options for better alignment of functions, and procedures for sharing of protective intelligence and investigative case information.
- Contributes multiple full-time personnel to the joint investigative and threat environment at the Multiple Threat Analysis Center (MTAC) at Quantico, Virginia. MTAC co-locates the identification, analysis, and referral of DoD investigations and threats worldwide on a 24/7/365-basis.
- Interfaces with partner agencies and the MTAC in investigating protective intelligence leads and threats of targeted violence affecting the Pentagon and other property under control of DoD in the NCR, and the personnel who work in these facilities.
- Is an associate member of the Defense Investigative Organization Enterprise-Wide Working (DEW) Group.

Since 2008, PFPA has served as the protection-providing organization (PPO) for the Office of the Secretary of Defense (excepting the Secretary and Deputy Secretary of Defense). Upon receiving this expanded protective responsibility for High Risk Personnel (HRP), PFPA did not receive expanded investigative authority commensurate to that granted to the Department's other PPOs. PFPA lacks the breadth of arrest authority that its counterpart PPOs possess. With the proposed authority, PFPA could pursue off-property, as necessary, protective

intelligence cases including investigating suspicious persons and suspicious communications. The focus is on the early detection and intervention of threats to HRP not covered by any other PPO.

Subsection (a) of the proposal also removes the Secretary's existing statutory authority to appoint contract personnel to perform law enforcement functions for DoD activities in the NCR. Under the proposal, contract personnel would be limited to authorized security functions for DoD activities in the NCR.

Secondly, subsection (b) of the proposal would provide to the Secretary of Defense the discretion to set the pay for law enforcement and security personnel appointed under 10 U.S.C. 2674 to a level not to exceed USSS/UD or the United States Park Police (USPP), *whichever is greater*. Currently, the Secretary is authorized to set pay at a level not to exceed USSS/UD or USPP. When this provision was enacted, USSS/UD and USPP pay were identical and were tied to the pay of the Washington D.C. Metropolitan Police. Due to subsequent legislation (USSS/UD Pay Act of 2010), the two pay scales now vary, different statues apply, and the pay of USSS/UD is no longer tied to that of Metropolitan Police. The proposal clarifies that the Secretary of Defense may set pay for law enforcement and security personnel appointed under 10 U.S.C. 2674 to a level not to exceed whichever of the two pay scales (USSS/UD or USPP) currently referenced in 10 U.S.C. 2674 is greater. This would provide the Secretarial discretion needed to administratively determine pay levels in accordance with human capital factors inclusive of recruiting, retention, workforce shaping, market forces, and comparability of duties to benchmarked agencies.

Subsection (c) of this proposal would provide for codification without substantive change of section 1074 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 113 note) as a new section 714 in title 10, United States Code. That section provides authority for the Secretary of Defense to provide protection within the United States to certain senior leaders of the Department of Defense and other specified persons.

Budget Implications: The resources reflected in the table below are funded within the Fiscal Year (FY) 2017 President's Budget. Enhancing the Secretary's current, administrative pay-setting authorities for civilian law enforcement and security personnel assigned to the Pentagon Reservation carries a cost of $3 to $3.3 million per year in payroll cost, which would be fully offset by PFPA. Offsets will be drawn from reductions in contractual services; purchases of administrative, operational, and training supplies; and purchases of selected equipment. The expansion of powers and authorities for law enforcement officers and agents appointed under Section 2674, if authorized, would have minimal budget implications. Minimal costs may be incurred from travel to investigate exceptional cases. Implementation of the proposal would involve existing organizations and personnel. There are no significant additional costs in training due to this change. Any training curriculum/text changes would be accomplished as part of the normal training development process and fully offset by PFPA.

RESOURCE REQUIREMENTS ($MILLIONS)

PRMRF	**FY**	**FY**	**FY**	**FY**		**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**

	2017	2018	2019	2020	FY 2021				
Object Class 11	2.81	2.85	2.89	2.94	3.00	Revolving Funds – Pentagon Reservation Maintenance Revolving Fund	3	0901585D8W	0901585D8W
Object Class 21	.02	.02	.02	.02	.02	Revolving Funds - Pentagon Reservation Maintenance Revolving Fund	3	0901585D8W	0901585D8W
Object Class 25	(1.90)	(1.93)	(1.95)	(1.99)	(2.02)	Revolving Funds - Pentagon Reservation Maintenance Revolving Fund	3	0901585D8W	0901585D8W
Object Class 26	(.25)	(.26)	(.26)	(.27)	(.27)	Revolving Funds - Pentagon Reservation Maintenance Revolving Fund	3	0901585D8W	0901585D8W
Object Class 31	(.68)	(.68)	(.70)	(.70)	(.73)	Revolving Funds - Pentagon Reservation Maintenance Revolving Fund	3	0901585D8W	0901585D8W
GRAND TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	Revolving Funds - Pentagon Reservation Maintenance Revolving Fund	3	0901585D8W	0901585D8W

BMF	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Object Class 11	.31	.32	.32	.33	.33	Revolving Funds – Building Maintenance Fund	2	0901586D8W	0901586D8W
Object Class 25	(.21)	(.21)	(.21)	(.22)	(.22)	Revolving Funds – Building Maintenance Fund	2	0901586D8W	0901586D8W
Object Class 26	(.03)	(.03)	(.03)	(.03)	(.03)	Revolving Funds – Building Maintenance Fund	2	0901586D8W	0901586D8W
Object Class 31	(.07)	(.08)	(.08)	(.08)	(.08)	Revolving Funds – Building Maintenance Fund	2	0901586D8W	0901586D8W
GRAND TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	Revolving Funds – Building Maintenance Fund	2	0901586D8W	0901586D8W

Changes to Existing Law: This proposal would make the following changes to existing law:

(1) The proposal would make changes to section 2674 of title 10, United States Code, as shown below.

(2) The proposal would codify and amend section 1074 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 113 note) as shown below.

TITLE 10, UNITED STATES CODE

§ 2674. Operation and control of Pentagon Reservation and defense facilities in National Capital Region

(a)(1) Jurisdiction, custody, and control over, and responsibility for, the operation, maintenance, and management of the Pentagon Reservation is transferred to the Secretary of Defense.

(2) Before March 1 of each year, the Secretary of Defense shall transmit to the congressional committees specified in paragraph (3) a report on the state of the renovation of the Pentagon Reservation and a plan for the renovation work to be conducted in the fiscal year beginning in the year in which the report is transmitted.

(3) The committees referred to in paragraph (2) are—

(A) the Committee on Armed Services and the Committee on Environment and Public Works of the Senate; and

(B) the Committee on Armed Services and the Committee on Transportation and Infrastructure of the House of Representatives.

~~(b)(1) The Secretary may appoint military or civilian personnel or contract personnel to perform law enforcement and security functions for property occupied by, or under the jurisdiction, custody, and control of the Department of Defense, and located in the National Capital Region. Such individuals—~~

~~(A) may be armed with appropriate firearms required for personal safety and for the proper execution of their duties, whether on Department of Defense property or in travel status; and~~

~~(B) shall have the same powers (other than the service of civil process) as sheriffs and constables upon the property referred to in the first sentence to enforce the laws enacted for the protection of persons and property, to prevent breaches of the peace and suppress affrays or unlawful assemblies, and to enforce any rules or regulations with respect to such property prescribed by duly authorized officials~~.

(b) LAW ENFORCEMENT AUTHORITIES AND PERSONNEL.— (1) The Secretary shall protect the buildings, grounds, and property located in the National Capital Region that are occupied by, or under the jurisdiction, custody, or control of the Department of Defense, and the persons on that property.

(2) The Secretary may designate military or civilian personnel to perform law enforcement functions and military, civilian, or contract personnel to perform security functions for such buildings, grounds, property, and persons, including, with regard to civilian personnel designated under this section, duty in areas outside the property referred to in paragraph (1) to the extent necessary to protect that property and persons on that property. Subject to the authorization of the Secretary, any such military or civilian personnel so designated may exercise the authorities listed in subsection (c)(1)-(5) of section 2672 of this title.

(3) The powers granted under paragraph (2) to military and civilian personnel designated under that paragraph shall be exercised in accordance with guidelines prescribed by the Secretary of Defense and approved by the Attorney General.

(4) Nothing in this subsection shall be construed to—

(A) preclude or limit the authority of any Defense Criminal Investigative Organization, or any other Federal law enforcement agency;

(B) restrict the authority of the Secretary of Homeland Security under the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) or the authority of the Administrator of General Services, including the authority to promulgate regulations affecting property under the custody and control of that Secretary or the Administrator, respectively;

(C) expand or limit section 21 of the Internal Security Act of 1950 (50 U.S.C. 797);

(D) affect chapter 47 of this title (the Uniform Code of Military Justice);

(E) restrict any other authority of the Secretary of Defense or the Secretary of a military department; or

(F) restrict the authority of the Director of the National Security Agency under section 11 of the National Security Agency Act of 1959 (50 U.S.C. 3609).

~~(2)~~ (5) For positions for which the permanent duty station is the Pentagon Reservation, the Secretary, in his sole and exclusive discretion, may without regard to the pay provisions of title 5, fix the rates of basic pay for such positions occupied by civilian law enforcement and security personnel appointed under the authority of this section so as to place such personnel on a comparable basis with personnel of other similar Federal law enforcement and security organizations within the vicinity of the Pentagon Reservation, not to exceed the basic pay for personnel performing similar duties in the United States Secret Service Uniformed Division or the United States Park Police, whichever is greater.

(c)(1) The Secretary may prescribe such rules and regulations as …***

* * * * * * *

(d) The Secretary of Defense may establish rates and collect charges for space, services, protection, maintenance, construction, repairs, alterations, or facilities provided at the Pentagon Reservation.

(e)(1) There is established in the Treasury of the United States a revolving fund to be known as the Pentagon Reservation Maintenance Revolving Fund (hereafter in this section referred to as the "Fund"). There shall be deposited into the Fund funds collected by the Secretary for space and services and other items provided an organization or entity using any facility or land on the Pentagon Reservation pursuant to subsection (d). ***

* * * * * * *

Section 1074 of the National Defense Authorization Act for Fiscal Year 2008

(Public Law 110-181; 10 U.S.C. 113 note)

[NB: The proposal would codify section 1074 of the FY 2008 NDAA as a new section 714 of title 10, United States Code, with the wording changes as shown below.]

~~SEC. 1074. PROTECTION OF CERTAIN INDIVIDUALS.~~

§714. Senior leaders of the Department of Defense and other specified persons: authority to provide protection within the United States

(a) PROTECTION FOR DEPARTMENT LEADERSHIP.—The Secretary of Defense, under regulations prescribed by the Secretary and in accordance with guidelines approved by the Secretary and the Attorney General, may authorize qualified members of the ~~Armed Forces~~ armed forces and qualified civilian employees of the Department of Defense to provide physical protection and personal security within the United States to the following persons who, by nature of their positions, require continuous security and protection:

(1) Secretary of Defense.

(2) Deputy Secretary of Defense.

(3) Chairman of the Joint Chiefs of Staff.

(4) Vice Chairman of the Joint Chiefs of Staff.

(5) Secretaries of the military departments.

(6) ~~Chiefs of the Services~~ Members of the Joint Chiefs of Staff in addition to the Chairman and Vice Chairman.

~~(7) Chief of the National Guard Bureau.~~

~~(8)~~ (7) Commanders of combatant commands.

(b) PROTECTION FOR ADDITIONAL PERSONNEL.—

(1) AUTHORITY TO PROVIDE.—The Secretary of Defense, under regulations prescribed by the Secretary and in accordance with guidelines approved by the Secretary and the Attorney General, may authorize qualified members of the ~~Armed Forces~~ armed forces and qualified civilian employees of the Department of Defense to provide physical protection and personal security within the United States to individuals other than individuals described in paragraphs (1) through ~~(8)~~ (7) of subsection (a) if the Secretary determines that such protection and security are necessary because—

(A) there is an imminent and credible threat to the safety of the individual for whom protection is to be provided; or

(B) compelling operational considerations make such protection essential to the conduct of official Department of Defense business.

(2) PERSONNEL.—Individuals authorized to receive physical protection and personal security under this subsection include the following:

(A) Any official~~, military member,~~ or employee of the Department of Defense or member of the Army, Navy, Air Force, or Marine Corps.

(B) A former or retired official who faces serious and credible threats arising from duties performed while employed by the Department for a period of up to two years beginning on the date on which the official separates from the Department.

(C) A head of a foreign state, an official representative of a foreign government, or any other distinguished foreign visitor to the United States who is primarily conducting official business with the Department of Defense.

(D) Any member of the immediate family of a person authorized to receive physical protection and personal security under this section.

(E) An individual who has been designated by the President, and who has received the advice and consent of the Senate, to serve as Secretary of Defense, but who has not yet been appointed as Secretary of Defense.

(3) LIMITATION ON DELEGATION.—The authority of the Secretary of Defense to authorize the provision of physical protection and personal security under this subsection may be delegated only to the Deputy Secretary of Defense.

(4) REQUIREMENT FOR WRITTEN DETERMINATION.—A determination of the Secretary of Defense to provide physical protection and personal security under this subsection shall be in writing, shall be based on a threat assessment by an appropriate law enforcement, security, or intelligence organization, and shall include the name and title of the officer, employee, or other individual affected, the reason for such determination, the duration of the authorized protection and security for such officer, employee, or individual, and the nature of the arrangements for the protection and security.

(5) DURATION OF PROTECTION.—

(A) INITIAL PERIOD OF PROTECTION.—After making a written determination under
paragraph (4), the Secretary of Defense may provide protection and security to an individual under this subsection for an initial period of not more than 90 calendar days.

(B) SUBSEQUENT PERIOD.—If, at the end of the period that protection and security is provided to an individual under subsection (A), the Secretary determines that a condition described in subparagraph (A) or (B) of paragraph (1) continues to exist with respect to the individual, the Secretary may extend the period that such protection and security is provided for additional 60-day periods. The Secretary shall review such a determination at the end of each 60-day period to determine whether to
continue to provide such protection and security.

(C) REQUIREMENT FOR COMPLIANCE WITH REGULATIONS.—Protection and personal security provided under subparagraph (B) shall be provided in accordance with the regulations and guidelines referred to in paragraph (1).

(6) SUBMISSION TO CONGRESS.—

(A) IN GENERAL.—Except as provided in subparagraph (D), the Secretary of Defense shall submit to the congressional defense committees each determination made under paragraph (4) to provide protection and security to an individual and of each determination under paragraph (5)(B) to extend such protection and security, together with the justification for such determination, not later than 15 days after the date on which the determination is made.

(B) FORM OF REPORT.—A report submitted under subparagraph (A) may be made in classified form.

(C) REGULATIONS AND GUIDELINES.—The Secretary of Defense shall submit to the congressional defense committees the regulations and guidelines

prescribed pursuant to paragraph (1) not less than 20 days before the date on which such regulations take effect.

(D) EXCEPTIONS.—Subparagraph (A) does not apply to determinations made with respect to the following individuals:

(i) An individual described in paragraph (2)(C) who is otherwise sponsored by the Secretary of Defense, the Deputy Secretary of Defense, the Chairman of the Joint Chiefs of Staff, or the Vice Chairman of the Joint Chiefs of Staff.

(ii) An individual described in paragraph (2)(E).

(c) DEFINITIONS.—In this ~~section:~~ section,

~~(1) CONGRESSIONAL DEFENSE COMMITTEES.—The term "congressional defense committees" means the Committee on Appropriations and the Committee on Armed Services of the Senate and the Committee on Appropriations and the Committee on Armed Services of the House of Representatives.~~

~~(2) QUALIFIED MEMBERS OF THE ARMED FORCES AND QUALIFIED CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE.—The~~ the terms "qualified members of the ~~Armed Forces~~ armed forces" and "qualified civilian employees of the Department of Defense" refer collectively to members or employees who are assigned to investigative, law enforcement, or security duties of any of the following:

(A) The Army Criminal Investigation Command.

(B) The Naval Criminal Investigative Service.

(C) The Air Force Office of Special Investigations.

(D) The Defense Criminal Investigative Service.

(E) The Pentagon Force Protection Agency.

(d) CONSTRUCTION.—

(1) NO ADDITIONAL LAW ENFORCEMENT OR ARREST AUTHORITY.—Other than the authority to provide protection and security under this section, nothing in this section may be construed to bestow any additional law enforcement or arrest authority upon the qualified members of the ~~Armed Forces~~ armed forces and qualified civilian employees of the Department of Defense.

(2) POSSE COMITATUS.—Nothing in this section shall be construed to abridge section 1385 of title 18~~, United States Code~~.

(3) AUTHORITIES OF OTHER DEPARTMENTS.—Nothing in this section may be construed to preclude or limit, in any way, the express or implied powers of the Secretary of Defense or other Department of Defense officials, or the duties and authorities of the Secretary of State, the Director of the United States Secret Service, the Director of the United States Marshals Service, or any other Federal law enforcement agency.

Section 903 would reorganize and consolidate the Office of Community Support for Military Families with Special Needs (OSN) and the Office of Family Policy/Children and Youth (OFP/CY) into the Office of Military Family Readiness Policy (OMFRP). This proposal does not create a new SES, General or Flag officer position. The proposal removes the requirement for the director of OSN to be a member of the Senior Executive Service or a General or Flag officer and instead would make that requirement for the Director of the newly formed

OMFRP. In light of the Department's current efforts to meet congressional intent regarding headquarters personnel, this reorganization will increase efficiency, enhance productivity, streamline efforts to ensure policies and programs are inclusive, and develop synergies between complementary functions within the Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy (MC&FP). Co-locating all cross-functional teams within MC&FP is essential for team-building and collaboration designed to provide a holistic approach to serving military families with special needs in tandem with other family support functions. Since the National Defense Authorization Act of 2010, OSN has undertaken an extensive standardization process to ensure military families with special needs have the same level of access to services in the three component areas of the Exceptional Family Member Program (EFMP) regardless of Service affiliation or location. In-depth reviews of programs that support the EFMP function, such as child care and family advocacy, have identified that to be truly effective, the EFMP program should take a more integrated approach to provide a holistic, inclusive delivery of services and this reorganization will achieve this goal. The stove piped EFMP structure is not integrated during program development, and instead is a more formal contributor after systems have been designed. This approach does not always support EFMP's inclusion during the development of new programs, policies, and processes, which leads to missed opportunities. While continuous analysis of the EFMP processes across the Military Services and the EFMP components will continue, it is now imperative to redesign the structure to support this holistic approach.

The mission of the OFP/CY is to promote military family readiness by preparing all Service members and their families to effectively navigate the challenges of daily living experienced in the unique context of military service. Working with the military Services, OFP/CY develops and maintains visibility on child development and youth programs, programs that enhance military spouse well-being with a focus on education and employment, prevention of domestic violence and child abuse and neglect, and family support programs which comprise the Family Readiness System, a network of agencies, programs, services, and individuals, and the collaboration among them, that promotes the readiness and quality of life of Service members and their families.

Support to military families with special needs is an especially important task for the Department. Military families with special needs are first *military* families. They have the same challenges any other military family may encounter in the face of periodic moves, deployments, and separation from family. Further, they face additional challenges, navigating often complex systems to obtain the services and benefits their families need to help their loved one function to their maximum potential.

Reorganizing OSN and OFP/CY into the new Office of Military Family Readiness Policy is critical to the quality, breadth, agility and responsiveness of the vast array of services this directorate provides to millions of Service members and their families.

Budget Implications: This is a non-budgetary proposal, as no additional costs are associated with its enactment.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
DOD	0.0	0.0	0.0	0.0	0.0	Operation and Maintenance, Defense-Wide			
Total	0.0	0.0	0.0	0.0	0.0	--	--	--	--

Changes to Existing Law: This section would make the following changes to sections 1781, 1781a, 1781c, and 131 of title 10, United States Code:

§1781. Office of Military Family Readiness Policy

(a) ESTABLISHMENT.—There is in the Office of the Secretary of Defense an Office of Military Family Readiness Policy (in this section referred to as the "Office"). The Office shall be headed by the Director of Military Family Readiness Policy, who shall serve within the Office of the Under Secretary of Defense for Personnel and Readiness. The Director shall be a member of the Senior Executive Service or a general officer of flag officer.

(b) DUTIES.—The Office—

(1) shall coordinate programs and activities of the military departments to the extent that they relate to military families; and

(2) shall make recommendations to the Secretaries of the military departments with respect to programs and policies regarding military families.

(c) STAFF.—The Office shall have not less than five professional staff members.

§1781a. Department of Defense Military Family Readiness Council

(a) IN GENERAL.—There is in the Department of Defense the Department of Defense Military Family Readiness Council (in this section referred to as the "Council").

(b) MEMBERS.—(1) The Council shall consist of the following members:

(A) The Under Secretary of Defense for Personnel and Readiness, who shall serve as chair of the Council and who may designate a representative to chair the council in the Under Secretary's absence.

(B) The following persons, who shall be appointed or designated by the Secretary of Defense:

(i) One representative of each of the Army, Navy, Marine Corps, and Air Force, each of whom shall be a member of the armed force to be represented.

(ii) One representative of the Army National Guard or the Air National Guard, who may be a member of the National Guard.

(iii) One spouse or parent of a member of each of the Army, Navy, Marine Corps, and Air Force, two of whom shall be the spouse or parent of an active

component member and two of whom shall be the spouse or parent of a reserve component member.

(C) Three individuals appointed by the Secretary of Defense from among representatives of military family organizations, including military family organizations of families of members of the regular components and of families of members of the reserve components.

(D) The senior enlisted advisor from each of the Army, Navy, Marine Corps, and Air Force, except that two of these members may instead be selected from among the spouses of the senior enlisted advisors.

(E) The Director of the Office of Military Family Readiness Policy~~Community Support for Military Families with Special Needs~~.

* * * * *

§ 1781c. Office of ~~Community Support for Military Families With~~ Special Needs

(a) ESTABLISHMENT.—There is in the ~~Office of the Under Secretary of Defense for Personnel and Readiness~~ Office of Military Readiness Policy the Office of ~~Community Support for Military Families With~~ Special Needs (in this section referred to as the “Office”).

(b) PURPOSE.—The purpose of the Office is to enhance and improve Department of Defense support around the world for military families with special needs (whether medical or educational needs) through the development of appropriate policies, enhancement and dissemination of appropriate information throughout the Department of Defense, support for such families in obtaining referrals for services and in obtaining service, and oversight of the activities of the military departments in support of such families.

~~(c) Director.—~~

~~(1) The head of the Office shall be the Director of the Office of Community Support for Military Families with Special Needs who shall be a member of the Senior Executive Service or a general officer or flag officer.~~

~~(2) In the discharge of the responsibilities of the Office, the Director shall be subject to the supervision, direction, and control of the Under Secretary of Defense for Personnel and Readiness.~~

* * * * *

§131. Office of the Secretary of Defense

(a) ***

(b) The Office of the Secretary of Defense is composed of the following:

***

(7) Other officials provided for by law, as follows:

***

(F) The Director of Military Family Readiness Policy under section 1781 of this title.

* * * * *

Section 904 would change the requirement for the Chairman of the Joint Chiefs of Staff (CJCS) to "review the missions, responsibilities (including geographic boundaries), and force structure of each combatant command," found within the Unified Command Plan (UCP), from not less than every two years to not less than every four years. This change would increase the minimum length of time permitted between reviews without limiting the ability of the CJCS to accomplish a review of combatant command responsibilities more frequently or as situations develop that may justify a review. It would also align the requirement for the CJCS to review roles and missions with requirements for the Quadrennial Defense Review (QDR) and the quadrennial review of roles and missions, found in sections 118 and 118b, respectively, of title 10, United States Code.

The intent of this proposal is to align the UCP reviews more effectively with those of the QDR in order to optimize the identification of combatant command responsibilities based on national strategic guidance. In accordance with section 118 of title 10 (QDR), the Secretary of Defense: "shall every four years, during a year following a year evenly divisible by four, conduct a comprehensive examination (to be known as a 'quadrennial defense review') of the national defense strategy, force structure, force modernization plans, infrastructure, budget plan, and other elements of the defense program and policies of the United States with a view toward determining and expressing the defense strategy of the United States and establishing a defense program for the next 20 years. Each such quadrennial defense review shall be conducted in consultation with the Chairman of the Joint Chiefs of Staff."

Section 118b of title 10 provides a similar requirement to that in section 161 of that title, but achieves a greater economy of effort by requiring this review on a quadrennial basis. Section 118b provides that the: "Secretary of Defense shall every four years conduct a comprehensive assessment (to be known as the 'quadrennial roles and missions review') of the roles and missions of the armed forces and the core competencies and capabilities of the Department of Defense to perform and support such roles and missions." Additionally, it requires the CJCS to accomplish an independent military assessment of roles and missions: "In each year in which the Secretary of Defense is required to conduct a comprehensive assessment pursuant to subsection (a), the Chairman of the Joint Chiefs of Staff shall prepare and submit to the Secretary the Chairman's assessment of the roles and missions of the armed forces and the assignment of functions to the armed forces, together with any recommendations for changes in assignment that the Chairman considers necessary to achieve maximum efficiency and effectiveness of the armed forces."

This proposal would better align the requirements for CJCS review of the responsibilities, roles, and missions of the combatant commands with the requirements for the QDR and quadrennial review of roles and missions. It would align the reviews with the review and development of quadrennial strategic guidance, and would do so at no additional cost. This change would facilitate the quadrennial production of the UCP without limiting the Chairman's ability to conduct a review of responsibilities, roles, and missions on a more frequent basis if required or desired.

Budget Implications: There are no projected budget implications due to the change made by this proposal. The periodicity adjustment of this report would not include any new cost associated with it.

Changes to Existing Law: This proposal would make the following change to existing law:

§ 161. Combatant Commands: establishment

(a) UNIFIED AND SPECIFIED COMBATANT COMMANDS.—With the advice and assistance of the Chairman of the Joint Chiefs of Staff, the President, through the Secretary of Defense, shall—

(1) establish unified combatant commands and specified combatant commands to perform military missions; and

(2) prescribe the force structure of those commands.

(b) PERIODIC REVIEW.—(1) The Chairman periodically (and not less often than every ~~**two**~~ **four** years) shall—

(A) review the missions, responsibilities (including geographic boundaries), and force structure of each combatant command; and

(B) recommend to the President, through the Secretary of Defense, any changes to such missions, responsibilities, and force structures as may be necessary.

(2) Except during time of hostilities or imminent threat of hostilities, the President shall notify Congress not more than 60 days after—

(A) establishing a new combatant command; or

(B) significantly revising the missions, responsibilities, or force structure of an existing combatant command.

(c) DEFINITIONS.—In this chapter:

(1) The term "unified combatant command" means a military command which has broad, continuing missions and which is composed of forces from two or more military departments.

(2) The term "specified combatant command" means a military command which has broad, continuing missions and which is normally composed of forces from a single military department.

(3) The term "combatant command" means a unified combatant command or a specified combatant command.

Section 905 would authorize the Secretary of Defense to return authority, direction, and control over the Information Assurance Directorate of the National Security Agency (NSA/IAD) to the Under Secretary of Defense for Intelligence (USD(I)).

Section 901(b) of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (P.L. 113-291) established a statutory Chief Information Officer (CIO) of the Department of Defense (DoD) and directed the CIO to exercise authority, direction, and control over NSA/IAD. This proposal would strike subparagraph (D) of section 142(b)(1) of title 10, United States Code, and allow the Secretary of

Defense to return authority, direction, and control over NSA/IAD to the USD(I). Prior to the enactment of the NDAA for FY 2015, the USD(I) exercised authority, direction, and control over the NSA *in toto* as the Principal Staff Assistant to the Secretary of Defense for all of NSA's mission areas, including information assurance activities, consistent with section 137 of title 10, and pursuant to the Secretary's direction in DoD Directives 5100.20 and 5143.01.

Because NSA as a whole is a defense agency that is also a defense intelligence component, and designated as a Combat Support Agency (CSA) pursuant to section 193 of title 10, the principle of unity of control under a single authority is central to the integration of signals intelligence and information assurance activities in support of the cybersecurity mission to protect and defend United States networks and information. The transfer of authority, direction, and control over NSA/IAD, in part a subordinate organization of NSA still under the oversight of USD(I), to another Principal Staff Assistant to the Secretary of Defense, introduces an oversight arrangement and process that is overly cumbersome and unnecessarily restrictive. Similarly, for a CSA not to have unity of control is unprecedented and inhibits the Secretary from carrying out the Secretary's responsibilities in the most effective and efficient manner.

The Department believes it is essential that authority, direction, and control of integrated and interdependent NSA activities be functionally and operationally integrated under a single Principal Staff Assistant for the Department, the USD(I). Allowing the Secretary of Defense to return authority, direction, and control over NSA/IAD to USD(I) will enable more effective management and oversight of the signals intelligence and information assurance mission areas.

To ensure coordination with and involvement of the CIO, the Office of the Secretary of Defense will establish an internal governance process to specifically review information assurance expenditures co-chaired by USD(I) and CIO.

Budget Implications: This proposal is budget neutral; the resources associated with NSA/IAD are funded within the FY 2017 President's Budget. Since NSA/IAD funding is classified, a table will be provided via separate cover upon request.

Change to Existing Law: This section would make the following changes to section 142 of title 10, United States Code:

§ 142. Chief Information Officer.

(a) There is a Chief Information Officer of the Department of Defense.

(b)(1) The Chief Information Officer of the Department of Defense—

(A) is the Chief Information Officer of the Department of Defense for the purposes of sections 3506(a)(2) and 3544(a)(3) of title 44;

(B) has the responsibilities and duties specified in section 11315 of title 40; **and**

(C) has the responsibilities specified for the Chief Information Officer in sections 2222, 2223(a), and 2224 of this title**.**~~; and~~

~~(D) exercises authority, direction and control over the information Assurance Directorate of the National Security Agency.~~

(2) The Chief Information Officer shall perform such additional duties and exercise such powers as the Secretary of Defense may prescribe.

(c) The Chief Information Officer takes precedence in the Department of Defense with the officials serving in positions specified in section 131(b)(4) of this title. The officials serving in positions specified in section 131(b)(4) and the Chief Information Officer of the Department of Defense take precedence among themselves in the order prescribed by the Secretary of Defense.

TITLE X—GENERAL PROVISIONS

Subtitle A—Financial Matters

Section 1001 would amend section 2345 of title 10, United States Code, to provide the Secretary of Defense the discretionary authority to liquidate unpaid debts owed to the United States by a foreign government or international organization as a result of the Department of Defense providing logistic support, supplies, and services to that foreign government or international organization. Liquidation would occur by offsetting the debt against any amounts owed by the Department of Defense to that foreign government or international organization for logistic support, supplies, or services obtained by the Department pursuant to a transaction or transactions concluded under the authority of subchapter I of Chapter 138, of title 10, United States Code.

At present, no statutory authority exists which specifically addresses situations in which a foreign government or international organization fails to pay a debt owed to the United States pursuant to an agreement concluded under the authority of subchapter I of chapter 138, title 10, United States Code.

This proposal would provide a means by which the United States may recover the overdue amounts owed, and credit the value of any debt offset in the same manner as specified for other receipts received from a foreign government or international organization pursuant to an agreement concluded under the authority of subchapter I of chapter 138, title 10, United States Code. This authority would apply to debts that remain unpaid more than 18 months after the Department of Defense has delivered the logistic support, supplies, and services to the foreign government or international organization. The discretionary nature of this authority would permit the Secretary of Defense to consider factors such as the amount involved, relations with the foreign government or international organization concerned, the prognosis for payment of the debt without resort to involuntary means, and similar factors before using this authority. This proposal would apply to overdue debts accrued before and after enactment of the proposal.

Budget Implications: If enacted this proposal would not increase the budgetary requirements of the Department of Defense.

RESOURCE REQUIREMENTS ($MILLIONS)+

	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Appropriation To	Budget Activity	Dash-1 Line Item	Program Element
Army	+0	+0	+0	+0	+0	Operations & Maintenance, Army			
Navy	+0	+0	+0	+0	+0	Operations & Maintenance, Navy			
Marine Corps	+0	+0	+0	+0	+0	Operations & Maintenance, Marine Corps			
Coast Guard	+0	+0	+0	+0	+0	Operations & Maintenance, Coast Guard			
Air Force	+0	+0	+0	+0	+0	Operations & Maintenance, Air Force			
DOD	+0	+0	+0	+0	+0	Transportation Working Capital Funds – 97X4930	02	21A	

NUMBER OF PERSONNEL AFFECTED							
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Appropriation To	Personnel Type (Officer, Enlisted, or Civilian)
Army	0	0	0	0	0	N/A	N/A
Navy	0	0	0	0	0	N/A	N/A
*Marine Corps	0	0	0	0	0	N/A	N/A
Air Force	0	0	0	0	0	N/A	N/A
Total	0	0	0	0	0		

Changes to Existing Law: This proposal would make the following changes in provisions of existing law:

§. 2345. Liquidation of accrued credits and liabilities

(a) 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.

(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.

Subtitle B—Counter-Drug Activities

Section 1011 would extend through fiscal year (FY) 2021 the authorities provided in section 1021 of the Ronald W. Reagan National Defense Authorization Act for FY 2005 that allow the Department of Defense to support a unified campaign against narcotics trafficking and activities by organizations designated as terrorist organizations. It also would extend the ceiling ("cap") on United States military personnel in Colombia for the same period. These important authorities provide the Department of Defense (DoD) the flexibility to use funds appropriated for counter-narcotics activities to support Colombian efforts against terrorist organizations intimately involved in narcotics production and trafficking activities. Section 1021 provides clear, unambiguous authority for DoD to provide support to the Government of Colombia as it continues to make progress against narco-terrorist organizations. The Revolutionary Armed Forces of Colombia (FARC) is designated a Foreign Terrorist Organization that uses the lucrative drug trade to raise funds for its terrorist activities. Although the FARC's numbers are down from a high of 18,000 to their current level of approximately 7,000, a sustained effort is needed to ensure that the FARC is not able to reconstitute itself. The National Strategy for Counterterrorism, which was released in June of 2011, states that the FARC continues to "pose significant threats to U.S. strategic interests as regional destabilizers and as threats to our citizens, facilities, and allies worldwide."

Section 1021 of the Ronald W. Reagan National Defense Authorization Act (NDAA) for FY 2005 allows DoD funds used for assistance to Colombia to be used to "support a unified campaign … against terrorist organizations such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN) and the United Self-Defense Forces of Colombia (AUC)" in fiscal years 2005 and 2006. This authority has been extended nine times, most recently in section 1011 of the National Defense Authorization Act for Fiscal Year 2016, which extended the Section 1021 authority through FY 2017.

Extending these authorities through FY 2021 would continue to provide the United States Southern Command flexibility in supporting operations in Colombia while adhering to all of the other constraints, such as not allowing U.S. military personnel to participate in Colombian military combat operations. The Command has never reached the 800 military personnel limit contained in the current authority. During FY 2005, the first year of implementation, the number of military personnel in Colombia never exceeded 538, and since then has declined, more recently averaging approximately 300 U.S. military personnel in Colombia at any one time.

Budgetary Implications: The proposal would extend the authority to use already appropriated counter-narcotics funds to combat terrorist organizations that are inextricably tied to illicit drug trafficking. The resources reflected in the table below are funded within the FY 2017's President's Budget. Total direct support funding for Colombia in FY 2017 is $36.5 million, in FY 2018 is $31.2 million, and in FY 2019 is $31.0 million, which directly affects the authority contained in Section 1021. Funding includes support to the United States' Colombia Strategic Development Initiative (CSDI). United States Southern Command will use these funds to assist the Government of Colombia in building the capabilities of their ten Joint Task Forces as outlined in the Colombian Counterinsurgency Strategy (Spanish Acronym CRE). Additionally, this funding would provide a variety of logistical and operational support activities directly supporting Colombia's internal conflict with the FARC and, by extension, supporting U.S. Government interests in stemming the flow of illicit drugs to the United States.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriations From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Amount	$36.5	$31.2	$31.0	$31.6	$32.0	Drug Interdiction and Counterdrug Activities, Defense	01	105D	

Changes to Existing Law: This proposal would make the following changes to section 1021 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375; 118 Stat. 2042), as amended by section 1023 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2382), section 1023 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4586), section 1011 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2441), section 1011 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 124 Stat. 4346), section 1007 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 125 Stat.

1558), section 1010 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1907); section 1011 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113-66; 127 Stat. 843); section 1011 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 128 Stat. 3483); and section 1011 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 129 Stat. XXX).

SEC. 1021. USE OF FUNDS FOR UNIFIED COUNTERDRUG AND COUNTERTERRORISM CAMPAIGN IN COLOMBIA.

(a) AUTHORITY.—(1) In fiscal years 2005 through ~~2017~~ 2021, funds available to the Department of Defense to provide assistance to the Government of Colombia may be used by the Secretary of Defense to support a unified campaign by the Government of Colombia against narcotics trafficking and against activities by organizations designated as terrorist organizations, such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC).

(2) The authority to provide assistance for a campaign under this subsection includes authority to take actions to protect human health and welfare in emergency circumstances, including the undertaking of rescue operations.

(b) APPLICABILITY OF CERTAIN LAWS AND LIMITATIONS.—The use of funds pursuant to the authority in subsection (a) shall be subject to the following:

(1) Sections 556, 567, and 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115; 115 Stat. 2160, 2165, and 2166).

(2) Section 8076 of the Department of Defense Appropriations Act, 2005 (Public Law 108–287; 118 Stat. 988).

(c) NUMERICAL LIMITATION ON ASSIGNMENT OF UNITED STATES PERSONNEL.—Notwithstanding section 3204(b) of the Emergency Supplemental Act, 2000 (Division B of Public Law 106–246; 114 Stat. 575), as amended by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115; 115 Stat. 2131), the number of United States personnel assigned to conduct activities in Colombia in connection with support of Plan Colombia under subsection (a) in fiscal years 2005 through ~~2017~~ 2021, shall be subject to the following limitations:

(1) The number of United States military personnel assigned for temporary or permanent duty in Colombia in connection with support of Plan Colombia may not exceed 800.

(2) The number of United States individual citizens retained as contractors in Colombia in connection with support of Plan Colombia who are funded by Federal funds may not exceed 600.

(d) LIMITATION ON PARTICIPATION OF UNITED STATES PERSONNEL.—No United States Armed Forces personnel, United States civilian employees, or United States civilian contractor personnel employed by the United States may participate in any combat operation in connection with assistance using funds pursuant to the authority in subsection (a), except for the purpose of acting in self defense or of rescuing any United States citizen, including any United States Armed Forces personnel, United States civilian employee, or civilian contractor employed by the United States.

(e) RELATION TO OTHER AUTHORITY.—The authority provided by subsection (a) is in addition to any other authority in law to provide assistance to the Government of Colombia.

(f) REPORT ON RELATIONSHIPS BETWEEN TERRORIST ORGANIZATIONS IN COLOMBIA AND FOREIGN GOVERNMENTS AND ORGANIZATIONS.—(1) Not later than 60 days after the date of the enactment of this Act, the Secretary of State, in consultation with the Secretary of Defense and the Director of Central Intelligence, shall submit to the congressional defense committees and the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a report that describes—

(A) any relationships between foreign governments or organizations and organizations based in Colombia that have been designated as foreign terrorist organizations under United States law, including the provision of any direct or indirect assistance to such organizations; and

(B) United States policies that are designed to address such relationships.

(2) The report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

Subtitle C—Transportation Matters

Section 1021 would amend subsection (d) of section 53106 of title 46, United States Code, to permit the Secretary to make a pro rata reduction in the amounts paid to vessel owners or operators under operating agreements under chapter 531 of that title if appropriations are insufficient to make full payment of the amounts authorized and agreed to under subsection (a) of section 53106.

Budget Implications: If enacted, this proposal will not increase the budgetary requirements of the Department of Defense.

Changes to Existing Law: This proposal would make the following changes to section 53106 of title 46, United States Code:

§ 53106. Payments

(a) ANNUAL PAYMENT.—

(1) IN GENERAL.-The Secretary, subject to the availability of appropriations and the other provisions of this section, shall pay to the contractor for an operating agreement, for each vessel that is covered by the operating agreement, an amount equal to-

(A) $2,600,000 for each of fiscal years 2006, 2007, and 2008;

(B) $2,900,000 for each of fiscal years 2009, 2010, and 2011;

(C) $3,100,000 for each of fiscal years 2012, 2013, 2014, and 2015;

(D) $4,999,950 for fiscal year 2017;

(E) $5,000,000 for each of fiscal years 2018, 2019, and 2020;

(F) $5,233,463 for fiscal year 2021; and

(G) $3,700,000 for each of fiscal years 2022, 2023, 2024, and 2025.

(2) TIMING.-The amount shall be paid in equal monthly installments at the end of each month. The amount shall not be reduced except as provided by this section.

(b) CERTIFICATION REQUIRED FOR PAYMENT.—As a condition of receiving payment under this section for a fiscal year for a vessel, the contractor for the vessel shall certify, in accordance with regulations issued by the Secretary, that the vessel has been and will be operated in accordance with section 53105(a)(1) for at least 320 days in the fiscal year. Days during which the vessel is drydocked, surveyed, inspected, or repaired shall be considered days of operation for purposes of this subsection.

(c) GENERAL LIMITATIONS.—The Secretary of Transportation shall not make any payment under this chapter for a vessel with respect to any days for which the vessel is—

(1) under a charter to the United States Government, other than a charter pursuant to an Emergency Preparedness Agreement under section 53107;

(2) not operated or maintained in accordance with an operating agreement under this chapter; or

(3) more than—

(A) 25 years of age, except as provided in subparagraph (B) or (C);

(B) 20 years of age, in the case of a tank vessel; or

(C) 30 years of age, in the case of a lighter aboard ship vessel.

(d) REDUCTIONS IN PAYMENTS.—With respect to payments under this chapter for a vessel covered by an operating agreement, the Secretary—

(1) except as provided in paragraph (2), shall not reduce any payment for the operation of the vessel to carry military or other preference cargoes under section 55302(a), 55304, 55305, or 55314 of this title, section 2631 of title 10, or any other cargo preference law of the United States;

(2) shall not make any payment for any day that the vessel is engaged in transporting more than 7,500 tons of civilian bulk preference cargoes pursuant to section 55302(a), 55305, or 55314 of this title that is bulk cargo; ~~and~~

(3) shall make a pro rata reduction in payment for each day less than 320 in a fiscal year that the vessel is not operated in accordance with section 53105(a)(1), with days during which the vessel is drydocked or undergoing survey, inspection, or repair considered to be days on which the vessel is operated~~.~~; and

(4) may make a pro rata reduction in payment in the event sufficient funds have not been appropriated to pay the full annual payment authorized in subsection (a).

(e) LIMITATION REGARDING NONCONTIGUOUS DOMESTIC TRADE.—

(1) IN GENERAL.-No contractor shall receive payments pursuant to this chapter during a period in which it participates in noncontiguous domestic trade.

(2) LIMITATION ON APPLICATION.-Paragraph (1) shall not apply to any person that is a citizen of the United States within the meaning of section 50501 of this title, applying the 75 percent ownership requirement of that section.

(3) PARTICIPATES IN A NONCONTIGUOUS DOMESTIC TRADE DEFINED.-In this subsection the term "participates in a noncontiguous domestic trade" means directly or indirectly owns, charters, or operates a vessel engaged in transportation of cargo between a point in the contiguous 48 States and a point in Alaska, Hawaii, or Puerto Rico, other than a point in Alaska north of the Arctic Circle.

* * * * * * *

Section 1022 would amend section 53102 of title 46, United States Code, to authorize the Secretary of Defense, in conjunction with the Secretary of Transportation, to extend the 20 and 25 year age restrictions applicable to a "participating fleet vessel" found in subsection (5)(A)(ii) of section 53101, and subsection (c)(3) of section 53106 of title 46, United States Code, for a period of up to five years, when the Secretaries jointly determine that it would be in the national interest to do so.

This proposal would provide the Secretaries concerned with the flexibility, on a case-by-case basis, to continue a vessel possessing unique or essential capabilities, or a vessel executing a long-term mission for the Department of Defense, in the Maritime Security Fleet rather than have the vessel "age out" of the Fleet as of an arbitrary date.

The proposal would also delete an unnecessary restriction on payments to 'lighter aboard ship' vessels that are at least 30 years old. The restriction is unnecessary because another section of 40 USC chapter 531 otherwise restricts to 25 years the maximum age of ships that may participate in the MSP program.

Budget Implications: If enacted, this proposal will not increase the budgetary requirements of the Department of Defense.

Changes to Existing Law: This proposal would make the following changes to section 53102 of title 46, United States Code:

§ 53102. Establishment of Maritime Security Fleet

(a) IN GENERAL.—The Secretary of Transportation, in consultation with the Secretary of Defense, shall establish a fleet of active, commercially viable, militarily useful, privately owned vessels to meet national defense and other security requirements and maintain a United States presence in international commercial shipping. The Fleet shall consist of privately owned, United States-documented vessels for which there are in effect operating agreements under this chapter, and shall be known as the Maritime Security Fleet.

(b) VESSEL ELIGIBILITY.—A vessel is eligible to be included in the Fleet if—

(1) the vessel meets the requirements of paragraph (1), (2), (3), or (4) of subsection (c);

(2) the vessel is operated (or in the case of a vessel to be constructed, will be operated) in providing transportation in foreign commerce;

(3) the vessel is self-propelled and—

(A) is a tank vessel that is 10 years of age or less on the date the vessel is included in the Fleet; or

(B) is any other type of vessel that is 15 years of age or less on the date the vessel is included in the Fleet;

(4) the vessel—

(A) is suitable for use by the United States for national defense or military purposes in time of war or national emergency, as determined by the Secretary of Defense; and

(B) is commercially viable, as determined by the Secretary; and

(5) the vessel—

(A) is a United States-documented vessel; or

(B) is not a United States-documented vessel, but-

(i) the owner of the vessel has demonstrated an intent to have the vessel documented under chapter 121 of this title if it is included in the Fleet; and

(ii) at the time an operating agreement for the vessel is entered into under this chapter, the vessel is eligible for documentation under chapter 121 of this title.

* * * * * * *

(f) AUTHORITY FOR WAIVER OF AGE RESTRICTION FOR ELIGIBILITY FOR A VESSEL TO BE INCLUDED IN THE FLEET.—The Secretary of Defense, in conjunction with the Secretary of Transportation, may waive the application of an age restriction under subsection (b)(3) if the Secretaries jointly determine that the waiver—

(1) is in the national interest;

(2) is appropriate to allow the maintenance of the economic viability of the vessel and any associated operating network; and

(3) is necessary due to the lack of availability of other vessels and operators that comply with the requirements of this chapter.

(g) AUTHORITY FOR EXTENSION OF MAXIMUM SERVICE AGE FOR A PARTICIPATING FLEET VESSEL .—The Secretary of Defense, in conjunction with the Secretary of Transportation, may, for a particular participating fleet vessel, extend the maximum age restrictions under section 53101(5)(A)(ii) and section 53106(c)(3) for a period of up to 5 years if the Secretaries jointly determine that it is in the national interest to do so.

* * * * * * *

§ 53106. Payments

(a) ***

* * * * * * *

(c) GENERAL LIMITATIONS.—The Secretary of Transportation shall not make any payment under this chapter for a vessel with respect to any days for which the vessel is—

(1) under a charter to the United States Government, other than a charter pursuant to an Emergency Preparedness Agreement under section 53107;

(2) not operated or maintained in accordance with an operating agreement under this chapter; or

(3) more than—

(A) 25 years of age, except as provided in subparagraph (B)~~ or (C)~~; or

(B) 20 years of age, in the case of a tank vessel.~~; or~~

~~(C) 30 years of age, in the case of a lighter aboard ship vessel.~~

Section 1023 would amend section 44310(b) of title 49, United States Code, to extend the authority of the Secretary of Transportation to provide aviation insurance and reinsurance upon the request of another United States Government agency. Extension is necessary to preclude lapse of this essential program, which has been in place since 1958. Government-provided insurance for air carriers providing transportation under contract to the Department of Defense (DoD) is essential during activation of the Civil Reserve Air Fleet, as well as other contingencies in which commercial insurance is either unavailable, or is not available at reasonable prices, in order to meet national defense needs. The lack of insurance in such circumstances would cripple the Department's ability to transport personnel and materiel in a timely manner, substantially impeding the effectiveness of the response to a contingency or natural disaster.

Budget Implications: If enacted, this proposal may increase the budgetary requirements of the Department of Defense.

RESOURCE REQUIREMENTS ($MILLIONS)+								
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation To**	**Budget Activity**	**Dash -1 Line Item**
Army	+0	+0	+0	+0	+0	Operation and Maintenance, Army		
Navy	+0	+0	+0	+0	+0	Operation and Maintenance, Navy		
Marine Corps	+0	+0	+0	+0	+0	Operation and Maintenance, Marine Corps		
Coast Guard	+0	+0	+0	+0	+0	Operation and Maintenance, Coast Guard		
Air Force	+0	+0	+0	+0	+0	Operation and Maintenance, Air Force		

DOD	+$1.5	+$1.5	+$1.5	+0	+0	Operation and Maintenance, Defense-Wide		
Total	+$1.5	+$1.5	+$1.5	+0	+0			

NUMBER OF PERSONNEL AFFECTED							
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation To**	**Personnel Type (Officer, Enlisted, or Civilian)**
Army	0	0	0	0	0	N/A	N/A
Navy	0	0	0	0	0	N/A	N/A
*Marine Corps	0	0	0	0	0	N/A	N/A
Air Force	0	0	0	0	0	N/A	N/A
Total	0	0	0	0	0		

Cost Methodology: Pursuant to a 2013 agreement between the Secretary of Defense and the Secretary of Transportation, countersigned by the President, and as required by 49 U.S.C. §44305(b), DoD must indemnify the Federal Aviation Administration (FAA) for all claims paid under insurance policies issued by the FAA at DoD's request. The source of funds to pay such claims is specified in section 9514(b) of title 10, United States Code, as "any funds available to the Department of Defense for operation and maintenance…". It is impossible to predict when such claims may arise, as well as the amount of such claims. From Fiscal Year (FY) 2006 through FY 2015, in excess of $15 million has been paid to the FAA by DoD for 28 claims related to operations in Afghanistan, and average of $1.5 million per year. However, between the program's inception in 1958 and 2006, there were no major claims. In addition, the cost avoidance to the Department of Defense by providing insurance under this authority rather than reimbursing air carriers for unreasonably priced commercial insurance is similarly difficult to quantify, but may in some instances more than offset the amount paid in claims.

Changes to Existing Law: This proposal would make the following changes to section 44310 of title 49, United States Code:

§ 44310. Ending effective date

(a) IN GENERAL.—The authority of the Secretary of Transportation to provide insurance and reinsurance under any provision of this chapter other than section 44305 is not effective after December 11, 2014.

(b) INSURANCE OF UNITED STATES GOVERNMENT PROPERTY.— The authority of the Secretary of Transportation to provide insurance and reinsurance for a department, agency, or instrumentality of the United States Government under section 44305 is not effective after December 31, ~~2018~~ 2019.

Subtitle D—Miscellaneous Authorities and Limitations

Section 1031 would amend section 130e of title 10, United States Code (U.S.C.), to authorize the Department of Defense to withhold sensitive, but unclassified military tactics, techniques, or procedures, including military rules of engagement, from release to the public under section 552 of title 5, U.S.C. (known as the Freedom of Information Act (FOIA)).

The decision of the Supreme Court in *Milner v. Department of the Navy*, 131 S. Ct. 1259 (2011), significantly narrowed the long-standing administrative understanding of the scope of Exemption 2 of the FOIA (5 U.S.C. 552(b)(2)). Before that decision, the Department was authorized to withhold sensitive information on critical infrastructure and military tactics, techniques, and procedures from release under FOIA pursuant to Exemption 2. Section 130e of title 10, U.S.C., was established in the National Defense Authorization Act for Fiscal Year 2012 to reinstate protection of critical infrastructure security information. This proposal would amend the existing infrastructure provision to add protections for military tactics, techniques, and procedures and rules of engagement.

The effectiveness of United States military operations is dependent upon adversaries, or potential adversaries, not having advance knowledge of the tactics, techniques, and procedures that will be employed in such operations. If an adversary or potential adversary has knowledge of such information, the adversary will be better able to identify and exploit any weaknesses, and the defense of the homeland, success of the operation, and the lives of U.S. military forces will be seriously jeopardized.

This proposal additionally makes minor amendments to: (1) clarify the citation for the purposes of the OPEN FOIA Act of 2009, (2) remove references to reflect the merger of the Director of Administration and Management with the Deputy Chief Information Officer of the Department of Defense, and (3) removes prohibition on further delegation.

Budget Implications: Exemptions for the release of certain information under FOIA would generate minimal savings to the Administration due to the avoidance of the preparation of select materials for release. However, review of requests will remain a cost to the various FOIA programs throughout DoD whether a release is made or not.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 17	FY 18	FY 19	FY 20	FY 21	Appropriations From	Budget Activity	Dash-1 Line Item	Program Element
DoD FOIA Organizations	0.0	0.0	0.0	0.0	0.0	Various	Various	Various	Various
Total	0.0	0.0	0.0	0.0	0.0	--	--	--	--

Changes to Existing Law: The proposal would make the following changes to existing law:

TITLE 10, UNITED STATES CODE

* * * * * * *

CHAPTER 3—General Power and Functions

* * * * * * *

130. Authority to withhold from public disclosure certain technical data.
[130a. Repealed.]
130b. Personnel in overseas, sensitive, or routinely deployable units: nondisclosure of personally identifying information.
130c. Nondisclosure of information: certain sensitive information of foreign governments and international organizations.
130d. Treatment under Freedom of Information Act of certain confidential information shared with State and local personnel.
130e. Nondisclosure of information: critical infrastructure; military tactics, techniques, and procedures~~Treatment under Freedom of Information Act of critical infrastructure security information~~.
130f. Congressional notification regarding sensitive military operations.

* * * * * * *

§130e. Nondisclosure of information: critical infrastructure; military tactics, techniques, and procedures ~~Treatment under Freedom of Information Act of critical infrastructure security information~~

(a) EXEMPTION.—The Secretary of Defense may exempt Department of Defense critical infrastructure security information or information related to military tactics, techniques, and procedures from disclosure ~~pursuant to section 552(b)(3) of title 5~~, upon a written determination that—

(1) the information is—

(A) Department of Defense critical infrastructure security information; or

(B) related to a military tactic, technique, or procedure, including a military rule of engagement; ~~and~~

(2) the public disclosure of this information could reasonably be expected to risk impairment of the effective operation of Department of Defense by providing an advantage to an adversary or potential adversary; and

(~~2~~3) the public interest consideration in the disclosure of such information does not outweigh preventing the disclosure of such information.

(b) INFORMATION PROVIDED TO STATE AND LOCAL GOVERNMENTS.—Department of Defense critical infrastructure security information covered by a written determination under subsection (a) that is provided to a State or local government shall remain under the control of the Department of Defense.

(c) DEFINITIONS.—In this section~~, t~~:

(1) DEPARTMENT OF DEFENSE CRITICAL INFRASTRUCTURE SECURITY INFORMATION.— The term "Department of Defense critical infrastructure security information" means sensitive but unclassified information that, if disclosed, would reveal vulnerabilities in Department of Defense critical infrastructure that, if exploited, would likely result in the significant disruption, destruction, or damage of or to Department of Defense operations, property, or facilities, including information regarding the securing and safeguarding of explosives, hazardous chemicals, or pipelines, related to critical infrastructure or protected systems owned or operated by or on behalf of the Department of Defense, including vulnerability assessments prepared by or on behalf of the Department of Defense, explosives safety information (including storage and handling), and other site-specific information on or relating to installation security.

(2) TACTIC.—The term "tactic" means the employment and ordered arrangement of forces in relation to each other.

(4) TECHNIQUE.—The term "technique" means non-prescriptive way or method used to perform a mission, function, or task.

(2) RULE OF ENGAGEMENT .—The term "rule of engagement" means a directive issued by a competent military authority that delineates the circumstances and limitations under which the armed forces will initiate or continue combat engagement with other forces encountered.

~~(d) DELEGATION.—The Secretary of Defense may delegate the authority to make a determination under subsection (a) to the Director of Administration and Management.~~

(~~e~~d) TRANSPARENCY.—Each determination of the Secretary~~, or the Secretary's designee,~~ under subsection (a) shall be made in writing and accompanied by a statement of the basis for the determination. All such determinations and statements of basis shall be available to the public, upon request, in accordance with guidelines prescribed by the Secretary~~though the Office of the Director of Administration and Management~~.

(e) CITATION FOR PURPOSES OF OPEN FOIA ACT OF 2009.—This section is a statute that specifically exempts certain matters from disclosure under section 552 of title 5, as described in subsection (b)(3) of that section.

TITLE XI—[RESERVED]

TITLE XII—MATTERS RELATED TO FOREIGN NATIONS

Section 1201 would extend the authority for the Secretary of Defense, in coordination with the Secretary of State, to provide assistance, including training, equipment, supplies, stipends, and other forms of assistance to appropriately vetted elements of the Syrian opposition (VSO). Continued authority to provide assistance and sustainment to the VSO is critical to defeating the Islamic State in Iraq and the Levant (ISIL) and other terrorists in Syria, and to promote a negotiated political settlement to end the conflict in Syria. Extension of this authority is necessary to build on the operational capabilities of both trained and already-fielded VSO forces.

The evolving nature of support for VSO has resulted in a recognition that there are capable, effective fighting forces within Syria that with weapons, munitions and equipment are capable of initiating offensive action against ISIL. Given the limited U.S. forces presence in Syria, partnering with VSO forces to provide critical Intelligence, Surveillance and Reconnassaince (ISR), fires, and sustainment support has demonstrated significant value and potential. There are an array of localized and largely irregular forces that with U.S. expertise and equipping posess formidable fighting prowess. These groups can singly and in concert apply pressure and exploit ISIL vulnerabilities, capitalize on localized popular rebellions and interdict key ISIL supply and lines of communication routes. This support will largely be for former Soviet bloc munitions for small arms, mounted large-caliber machine guns, anti-armor weapons to combat ISIL Suicide Vehicle Borne Improvised Explosive Devices (SVBIED) that are used on a large scale by ISIL, and mortars to provide indirect fire support against ISIL positions and personnel. This will include both those assets issued to the VSO as well as commercial sustainment support in both northern and southern Syria, as well as ultimately into the interior of the country.

Extension of this authority will allow the Secretary of Defense to assist the transition of the VSO from capable, but disparate separate groups, into a broader grouping of increasingly more integrated, heavily armed and mobileforce capable of supporting evolving, sustained operations across an increasingly broad area as well as working in conjunction with U.S. special forces, aircraft and logistics capabilities to facilitate resupply and momentum.

This proposal is an extension of an existing authority and reflects increased resource requirements for FY 2017 as additional VSO forces are recruiting, trained, and employednd U.S. and coalition support for fielded VSO forces both operationally and logistically is expanded. This funding will provide robust external sustainment inside of Syria and provide a tangible demonstration of U.S. commitment. Failure to fund VSO forces will likely result in more territory ceded to ISIL, insecure borders for Syria's neighbors, increased internally and externally deplaced populace, and exacerbation of existing sectarian strife. This will prolong conflict, continue to attract foreign extremists, and dissuade the Syrian regime from pursuing a negotiated end to the conflict.

Budget Implications: The resources reflected in the table below are funded within the FY 2017 President's Overseas Contingency Operations (OCO) Budget.

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Syria T&E	$250					Syria Train and Equip	01	
Total	$250						01	

Changes to Existing Law: This proposal would make the following changes to section 1209 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291):

SEC. 1209. AUTHORITY TO PROVIDE ASSISTANCE TO THE VETTED SYRIAN OPPOSITION.

(a) IN GENERAL.—The Secretary of Defense is authorized, in coordination with the Secretary of State, to provide assistance, including training, equipment, supplies, stipends, construction of training and associated facilities, and sustainment, to appropriately vetted elements of the Syrian opposition and other appropriately vetted Syrian groups and individuals, through ~~December 31, 2016~~ September 30, 2018, for the following purposes:

(1) Defending the Syrian people from attacks by the Islamic State of Iraq and the Levant (ISIL), and securing territory controlled by the Syrian opposition.

(2) Protecting the United States, its friends and allies, and the Syrian people from the threats posed by terrorists in Syria.

(3) Promoting the conditions for a negotiated settlement to end the conflict in Syria.

(b) NOTICE BEFORE PROVISION OF ASSISTANCE.—Not later than 15 days prior to the provision of assistance authorized under subsection (a) to appropriately vetted recipients for the first time—

(1) the Secretary of Defense, in coordination with the Secretary of State, shall submit to the appropriate congressional committees and leadership of the House of Representatives and Senate a report, in unclassified form with a classified annex as appropriate, that contains a description of—

(A) the plan for providing such assistance;

(B) the requirements and process used to determine appropriately vetted recipients; and

(C) the mechanisms and procedures that will be used to monitor and report to the appropriate congressional committees and leadership of the House of Representatives and Senate on unauthorized end-use of provided training and equipment and other violations of relevant law by appropriately vetted recipients; and

(2) the President shall submit to the appropriate congressional committees and leadership of the House of Representatives and Senate a report, in unclassified form with a classified annex as appropriate, that contains a description of how such assistance fits within a larger regional strategy.

(c) PLAN ELEMENTS.—The plan required in subsection (b)(1) shall include, at a minimum, a description of—

(1) the goals and objectives of assistance authorized under subsection (a);

(2) the concept of operations, timelines, and types of training, equipment, stipends, sustainment, construction, and supplies to be provided;

(3) the roles and contributions of partner nations;

(4) the number and role of United States Armed Forces personnel involved;

(5) any additional military support and sustainment activities; and

(6) any other relevant details.

(d) QUARTERLY PROGRESS REPORT.—Not later than 90 days after the Secretary of Defense submits the report required in subsection (b)(1), and every 90 days thereafter, the Secretary of Defense, in coordination with the Secretary of State, shall submit to the appropriate congressional committees and leadership of the House of Representatives and the Senate a progress report. Such progress report shall, based on the most recent quarterly information, include—

(1) any updates to or changes in the plan, strategy, vetting requirements and process, and end-use monitoring mechanisms and procedures, as required in subsection (b)(1);

(2) a description of how the threat of attacks against United States or coalition personnel is being mitigated, statistics on any such attacks, including green-on-blue attacks, and how such attacks are being mitigated;

(3) a description of the appropriately vetted recipients receiving assistance authorized under subsection (a);

(4) the recruitment, throughput, and retention rates of appropriately vetted recipients and equipment;

(5) any misuse or loss of provided training and equipment and how such misuse or loss is being mitigated;

(6) a description of the command and control of appropriately vetted recipients;

(7) an assessment of the operational effectiveness of the appropriately vetted recipients in meeting the purposes specified in subsection (a);

(8) a description of sustainment support provided to appropriately vetted recipients pursuant to subsection (a);

(9) a list of construction projects carried out under authority in subsection (a);

(10) a statement of the amount of funds expended during the period for which the report is submitted, and in aggregate since September 19, 2014, to provide assistance by authorized category pursuant to subsection (a) and section 149 of the Continuing Appropriations Resolution, 2015 (Public Law 113–164);

(11) an assessment of the effectiveness of the assistance authorized under subsection (a) as measured against subsections (b) and (c).;

(12) a description of support, if any, provided to appropriately vetted recipients pursuant to subsection (a) while those forces are located in Syria, including—

(A) logistics support;

(B) defense supporting fire;

(C) intelligence; and

(D) medical support; and

(13) a description of the number of appropriately vetted recipients located in Syria, the approximate locations in which they are operating, and the number of known casualties among such recipients.

(e) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) The term ‘‘appropriately vetted’’ means, with respect to elements of the Syrian opposition and other Syrian groups and individuals, at a minimum—

(A) assessments of such elements, groups, and individuals for associations with terrorist groups, Shia militias aligned with or supporting the Government of Syria, and groups associated with the Government of Iran. Such groups include,

but are not limited to, the Islamic State of Iraq and the Levant (ISIL), Jabhat al Nusrah, Ahrar al Sham, other al-Qaeda related groups, and Hezbollah; and

(B) a commitment from such elements, groups, and individuals to promoting the respect for human rights and the rule of law.

(2) The term ''appropriate congressional committees'' means—

(A) the Committee on Armed Services, the Committee on Foreign Affairs, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives; and

(B) the Committee on Armed Services, the Committee on Foreign Relations, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate.

~~(f) REPROGRAMMING REQUIREMENT.—~~

~~(1) IN GENERAL.—The Secretary of Defense may submit a reprogramming or transfer request of funds made available for Overseas Contingency Operations beginning on October 1, 2014, and ending on December 31, 2016, to the congressional defense committees to carry out activities authorized under this section.~~

~~(2) INFORMATION ACCOMPANYING REPROGRAMMING REQUESTS.—Each request under paragraph (1) shall include the following:~~

~~(A) The amount, type, and purpose of assistance to be funded pursuant to such request.~~

~~(B) The budget, implementation timeline with milestones, and anticipated delivery schedule for such assistance.~~

(f) FUNDING.—Of the amounts made available for Overseas Contingency Operations for fiscal year 2017, there are authorized to be appropriated $250,000,000 to carry out this section. Amounts authorized to be appropriated under this subsection are authorized to remain available through September 30, 2018.

(g) AUTHORITY TO ACCEPT CONTRIBUTIONS.—The Secretary of Defense may accept and retain contributions, including assistance in-kind, from foreign governments to provide assistance as authorized by this section. Any funds so accepted by the Secretary shall be credited to appropriations for the appropriate operation and maintenance accounts, except that any funds so accepted by the Secretary shall not be available for obligation until a reprogramming request is submitted to the congressional defense committees.

(h) CONSTRUCTION OF AUTHORIZATION.—Nothing in this section shall be construed to constitute a specific statutory authorization for the introduction of United States Armed Forces into hostilities or into situations wherein hostilities are clearly indicated by the circumstances.

(i) WAR POWERS RESOLUTION MATTERS.—Nothing in this section supersedes or alters the continuing obligations of the President to report to Congress pursuant to section 4 of the War Powers Resolution (50 U.S.C. 1543) regarding the use of United States Armed Forces abroad.

(j) WAIVER AUTHORITY.—For purposes of the provision of assistance pursuant to subsection (a), the President may waive any provision of law if the President determines that such provision of law would (but for the waiver) impede national security objectives of the United States by prohibiting, restricting, delaying, or otherwise limiting the provision of such assistance. Such waiver shall not take effect until 30 days after the date on which the President notifies the appropriate congressional committees of such determination and the provision of law to be waived.

(k) ASSISTANCE TO THIRD COUNTRIES IN PROVISION OF ASSISTANCE.—The Secretary may provide assistance to third countries for purposes of the provision of assistance authorized under this section.

Section 1202 would extend through fiscal year (FY) 2017 the authorization for the Commanders' Emergency Response Program (CERP) in Afghanistan under section 1201 of the National Defense Authorization Act for Fiscal Year 2012 and would authorize $5,000,000 for that program for FY 2017. CERP will remain an important tool for military commanders in Afghanistan for battle damage and condolensce payments and for small scale projects that enhance local conditions and contribute to force protection.

Budget Implications: The resources reflected in the table below are funded with in the FY 2017 President's Overseas Contingency Operations (OCO) Budget.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
CERP	$5.0					Operation and Maintenance, Army OCO	01	136	0201195A
Total	$5.0								

Changes to Existing Law: This proposal would make the following change to section 1201 of the National Defense Authorization Act for Fiscal Year 2012, as amended:

SEC. 1201. COMMANDERS' EMERGENCY RESPONSE PROGRAM IN AFGHANISTAN.

(a) AUTHORITY.—During fiscal year ~~2016~~ 2017, from funds made available to the Department of Defense for operation and maintenance, not to exceed ~~$10,000,000~~ $5,000,000 may be used by the Secretary of Defense in such fiscal year to provide funds for the Commanders' Emergency Response Program in Afghanistan.

(b) SEMI-ANNUAL REPORTS.—

(1) SEMI-ANNUAL REPORTS.—Not later than 45 days after the end of each half fiscal year of fiscal year ~~2016~~ 2017, the Secretary of Defense shall submit to the congressional defense committees a report regarding the source of funds and the

allocation and use of funds during that half fiscal year that were made available pursuant to the authority provided in this section or under any other provision of law for the purposes of the program under subsection (a).

(2) FORM.—Each report required under paragraph (1) shall be submitted, at a minimum, in a searchable electronic format that enables the congressional defense committees to sort the report by amount expended, location of each project, type of project, or any other field of data that is included in the report.

(c) SUBMISSION OF GUIDANCE.—

(1) INITIAL SUBMISSION.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a copy of the guidance issued by the Secretary to the Armed Forces concerning the allocation of funds through the Commanders' Emergency Response Program in Afghanistan.

(2) MODIFICATIONS.—If the guidance in effect for the purpose stated in paragraph (1) is modified, the Secretary shall submit to the congressional defense committees a copy of the modification not later than 15 days after the date on which the Secretary makes the modification.

(d) WAIVER AUTHORITY.—For purposes of exercising the authority provided by this section or any other provision of law making funding available for the Commanders' Emergency Response Program in Afghanistan, the Secretary of Defense may waive any provision of law not contained in this section that would (but for the waiver) prohibit, restrict, limit, or otherwise constrain the exercise of that authority.

(e) RESTRICTION ON AMOUNT OF PAYMENTS.—Funds made available under this section for the Commanders' Emergency Response Program in Afghanistan may not be obligated or expended to carry out any project if the total amount of funds made available for the purpose of carrying out the project, including any ancillary or related elements of the project, exceeds $500,000.

(f) AUTHORITY TO ACCEPT CONTRIBUTIONS.—The Secretary of Defense may accept cash contributions from any person, foreign government, or international organization to provide funds for the Commanders' Emergency Response Program in Afghanistan in fiscal year ~~2016~~ 2017. Funds received by the Secretary may be credited to the operation and maintenance account from which funds are made available to provide such funds, and may be used for such purpose until expended in addition to the funds specified in subsection (a).

(g) NOTIFICATION.—Not less than 15 days before obligating or expending funds made available under this section for the Commanders' Emergency Response Program in Afghanistan for a project in Afghanistan with a total anticipated cost of $500,000 or more, the Secretary of Defense shall submit to the congressional defense committees a written notice containing the following information:

(1) The location, nature, and purpose of the proposed project, including how the project is intended to directly benefit the security or stability of the people of Afghanistan.

(2) The budget and implementation timeline for the proposed project, including any other funding under the Commanders' Emergency Response Program in Afghanistan that has been or is anticipated to be contributed to the completion of the project.

(3) A plan for the sustainment of the proposed project, including any written agreement with either the Government of Afghanistan, an entiry owned or controlled by the Government of Afghanistan, a department or agency of the United States Government other than the Department of Defense, or a third party contributor to finance the sustainment of the activities and maintenance of any equipment or facilities to be provided through the proposed project.

(h) COMMANDERS' EMERGENCY RESPONSE PROGRAM IN AFGHANISTAN DEFINED.—In this section, the term "Commanders' Emergency Response Program in Afghanistan" means the program that--

(1) authorizes United States military commanders in Afghanistan to carry out small-scale projects designed to meet urgent humanitarian relief requirements or urgent reconstruction requirements within their areas of responsibility; and

(2) provides an immediate and direct benefit to the people of Afghanistan.

(i) CONFORMING AMENDMENT.—***

Section 1203 would authorize the Secretary of Defense and the Secretary of State to enter into an agreement under which each Secretary may provide certain logistic support, supplies, and services on a reimbursement basis, or by exchange of certain logistic support, supplies, and services, to the other Secretary during a contingency operation and related transition period for up to 2 years following the end of such contingency operation. The Secretary of Defense and the Secretary of State would exercise the approved authority to enter into agreements for certain logistic support, supplies, and services in accordance with the procedures established by the proposal. This proposal would supply the national security stakeholders with greater flexibility and agility during contingency operations and transition periods. It would support collaborative, "whole-of-government" efforts between the Department of Defense and the Department of State by leveraging available resources between the two Departments and, therefore, reduce duplication of effort. This proposed legislation represents an important step towards achieving greater efficiency and productivity in Defense spending and achieving better buying power U.S. Government-wide. Additionally, this proposal would have immediate application in furtherance of the U.S. strategic objective of building a more stable and secure Afghanistan, while also serving as a model for addressing interagency support during future contingencies.

Section 1535 of title 31, United States Code, referred to as the "Economy Act," provides authority for Federal departments and agencies to purchase goods or services from other Federal departments and agencies under the following conditions: (1) amounts for the purchase are available; (2) the purchase is in the best interest of the government; (3) the ordered goods or services cannot be provided more cost-efficiently by contract from a commercial enterprise; and (4) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services. The Federal Acquisition Regulation, 48 CFR 17.503(b), states that Economy Act orders must include: (1) a description of the supplies or services required; (2) delivery requirements; (3) a funds citation; (4) a payment provision; and (5) acquisition authority as may

be appropriate. This proposal would supplement the Economy Act to authorize the Secretary of Defense and the Secretary of State to enter into an agreement during a contingency operation and related transition period for up to 2 years following the end of such contingency operation. This proposal would provide for the Departments of State and Defense an authority akin to that which already is statutorily available to friendly foreign governments and specified international organizations allowing their military forces to acquire from and transfer to U.S. forces logistics support, supplies, and services in accordance with sections 2341-2350 of title 10, United States Code. It is envisioned that the execution of interagency agreements between DOS and DoD and the implementation of financial procedures will follow and be consistent with established Acquisition and Cross-Servicing Agreement practices and procedures.

Budget Implications: Since this proposal is modeled after established Acquisition Cross-Servicing Agreements which are inherently cost neutral, e.g. in-kind exchange of goods/services, there are no budgetary implications to this proposal.

Changes to Existing Law: This proposal would make no changes to the text of existing law.

Section 1204 would amend section 1251 of the National Defense Authorization Act for Fiscal Year (FY) 2016, Public Law 114-92 (hereinafter "section 1251"), relating to training for Eastern European national military forces in the course of multilateral exercises, by (1) permitting the use of certain European Reassurance Initiative funds from the Overseas Contingency Operations, Army, account for the payment of incremental expenses, and (2) extending the termination date from September 30, 2017 to September 30, 2018.

There are no additional costs associated with this proposal.

Use of European Reassurance Initiative funds

Subsection (a) of the proposal would amend section 1251(d)(2), relating to the sources of incremental funding, by adding, as a source of funding, European Reassurance Initiative (ERI) funds in the "additional activities" line of the Overseas Contingency Operations, Army account. [4] Under current section 1251, funding for those expenses can only come from (1) the Combatant Commands Direct Support Program in the operation and maintenance, Army account; or (2) the Wales Initiative Fund in the operation and maintenance, Defense-wide account.

There would be no increase in the annual funding limit of $28,000,000 under section 1251(d)(1). The amendment would simply increase flexibility by enabling the Secretary of Defense to take advantage of approximately $8.5 million in funds available to the U.S. European Command (EUCOM) under ERI in order to fulfill the Congressional directive to enhance security and stability through "increased security assistance to allies and partners in Europe." Joint Explanatory Statement to accompany S. 1356, the National Defense Authorization Act for Fiscal Year 2016 at 260 (Nov. 10, 2015).

---

[4] See PL 114-92, National Defense Authorization Act for Fiscal Year 2016, section 4302, line 140. The amount proposed for EUCOM for the European Reassurance Initiative would be specified in the Army Operation and Maintenance, Overseas Contingency Operations justification documents.

ERI was not included in the original request for authority because, during the summer and fall of 2014, while the proposal was being discussed within the Department, the Overseas Contingency Operations budget was still being formulated, and the availability—much less the amount—of ERI for EUCOM was nearly speculative.

Currently, ERI funds are made available through the Overseas Contingency Operations account, and to EUCOM in the "additional activities" line of the Operation and Maintenance Overseas Contingency Operations, Army. The FY 2016 amount for EUCOM is approximately $8.5 million. Section 1251(d) limits funding to "base budget" appropriations—Combatant Commands Direct Support (Operation and Maintenance, Army) and the Wales Initiative Fund (Operation and Maintenance, Defense-wide). With no increase in government spending, this amendment would permit a combatant commander to use available funds more effectively and free up other fund sources for other types of training. Since ERI funds do not carry any authorization, we believe it would make sense to permit the use of those funds under section 1251for the Congressionally-directed result.

Extension of termination date

Subsection (b) of the proposal would extend the ending date of the authority from September 30, 2017, to September 30, 2018. It would also permit completing actions initiated before September 30, 2017, but using only funds available for fiscal years 2016 through 2018.

This amendment is necessary to support a sustained, multi-year effort while still retaining a termination date that facilitates Congressional review. Briefly put, success is more likely with more than just a near-term approach. In our view, three years would be a much better time frame to enable Allies and partners to adapt to the changed strategic environment in Europe and counter hybrid warfare as well as conventional threats to the Alliance.

The Department's original request was for a five-year period. A three-year period would still permit a more sustained test of the program while retaining Congressional control.

Budget Implications: There would be no additional costs for this proposal. It would utilize funds that would become available under the Operation and Maintenance Overseas Contingency Operations account under the heading "Additional Activities" (Operation and Maintenance, Army, Overseas Contingency Operations, subactivity group 135). The limit on expenditures under section 1251—$28,000,000 per fiscal year—would be unchanged.

The resources reflected in the table below are funded within the FY 2017 President's Budget.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Warsaw Initiative Fund	2	7	7	7	7	Operation and Maintenance, Defense-Wide	04	4GTD	
Building Partner	0	1	1	1	1	Operation and	01	138	

Capacity						Maintenance, Army			
NATO Response Force	11	11	11	11	11	Operation and Maintenance, Army	01	138	
Traditional Commander Activities	0	3	3	3	3	Operation and Maintenance, Army	01	138	
Partnership Development Program	6	6	6	6	6	Operation and Maintenance, Army	01	138	
Additional Activities/*European Reassurance Initiative*	9	0	0	0	0	Operation and Maintenance, Army, OCO	01	135	
Total	28	28	28	28	28				

Changes to Existing Law: This proposal would make the following changes to section 1251 of the National Defense Authorization Act for Fiscal Year 2016:

SEC. 1251. TRAINING FOR EASTERN EUROPEAN NATIONAL MILITARY FORCES IN THE COURSE OF MULTILATERAL EXERCISES.

(a) * * *

* * *

(d) FUNDING OF INCREMENTAL EXPENSES.–

(1) * * *

(2) AMOUNTS.–The amounts specified in this paragraph are as follows:

(A) * * *

* * *

(C) Amounts authorized to be appropriated for a fiscal year for operation and maintenance overseas contingency operations, Army, and available for the European Reassurance Initiative in the "additional activities" line.

* * *

(h) TERMINATION OF AUTHORITY.–The authority under this section shall terminate on September 30, ~~2017~~ 2018. Any activity under this section initiated before that date may be completed, but only using funds available for fiscal years 2016 through ~~2017~~ 2018.

TITLE XIII—[RESERVED]

TITLE XIV—OTHER AUTHORIZATIONS

Subtitle A—Military Programs

Section 1401 would authorize appropriations for the Defense Working Capital Funds in the amount equal to the budget authority requested in the President's Budget for fiscal year 2017.

Section 1402 would authorize appropriations for the Joint Urgent Operational Needs Fund in the amount equal to the budget authority requested in the President's Budget for fiscal year 2017.

Section 1403 would authorize appropriations for Chemical Agents and Munitions Destruction, Defense in amounts equal to the budget authority requested in the President's Budget for fiscal year 2017.

Section 1404 would authorize appropriations for Drug Interdiction and Counter-Drug Activities, Defense-wide in the amount equal to the budget authority requested in the President's Budget for fiscal year 2017.

Section 1405 would authorize certain disposals of materials from, and acquisition of materials for, the National Defense Stockpile (Stockpile) under the Strategic and Critical Materials Stock Piling Act (Act). The revenue generated by the proposed disposals would more than offset the cost of the new acquisitions resulting in no new appropriations.

DISPOSAL

Subsection (a) of this proposal would authorize the National Defense Stockpile Manager to dispose of materials that have been determined, based upon the analysis required by the Act to be excess to requirements and no longer needed for the Stockpile. The materials listed in the proposal were among those that had been previously authorized for disposal under the Strom Thurmond National Defense Authorization Act for Fiscal Year for Fiscal Year 1999 and the National Defense Authorization Act for Fiscal Year 2000. All revenue goals required by these authorizations will be met by the end of Fiscal Year (FY) 2015 without needing to dispose the complete stockpiles of the listed materials, which have been determined now to be excess to Department of Defense (DoD) needs.

ACQUISITION

Subsection (b) of this proposal would provide authority under section 5(a)(1) of the Act (50 U.S.C. 98d(a)(1)) to acquire strategic and critical materials for the Stockpile.

The seven materials for which acquisition authority is requested have been identified as necessary to meet the military, industrial, and essential civilian needs of the United States through a rigorous analytical requirements determination processes and are identified in the 2013 Biennial Report to the Congress on Stockpile Requirements (Report) and the 2015 Reports. The Report is prepared pursuant to the Act, which applies a rigorous analytical process to identify strategic and critical materials required to sustain the United States during various military conflict scenarios developed by the Under Secretary of Defense for Policy. A discussion of the materials follows.

High Modulus and High Strength Carbon Fibers. High modulus and high strength carbon fibers are used in various critical defense and National Security Space (NSS) applications such as rocket motors, missiles, pressure vessels, manned and unmanned military aircraft, helicopters blades, commercial launch vehicles, wing structures and satellites. These systems are critical for global Intelligence, Surveillance and Reconnaissance and sustained engagement capabilities. The producer of both NSS and Department of Defense (DoD) qualified high-modulus fibers as well as the high-strength is both foreign and a sole source. It operates close to capacity with long lead times for all fibers, which substantially limits supply chain agility and responsiveness to United States (U.S.) military and space operational requirements. U.S. defense industry consumers are completely dependent on this single, foreign source of supply; consequently, any supply disruption, either from a natural disaster, conflict, increased demand or policy shift would put many DoD and NSS platforms at risk.

Tantalum. Tantalum is used in various critical defense systems including super-alloys for high-temperature sections of jet engines, shaped charges, explosively formed penetrators, missile systems, ignition systems, night-vision goggles and global positioning systems. Defense demand for tantalum equally is split between aircraft engines/parts and electronic components. There is no domestic mining of tantalum despite the U.S. being the world's largest consumer, accounting for a third of global demand. The needs of the large domestic downstream processing industry are met by imports of tantalum, mainly from Australia, Canada and Mozambique. The U.S. is 100 percent import-reliant for primary tantalum. The FY 2013 Report noted tantalum demand may exceed supply during a national emergency scenario.

Germanium. High-purity germanium is a critical component in the manufacture of lenses for infrared devices and solar cells. These systems are critical for national defense surveillance, reconnaissance and nighttime engagement capabilities. There is only one domestic producer of high-purity germanium; however, production capacity is limited and unable accommodate a surge in demand in the event of a national emergency. The current Stockpile inventory is 13,362 kg of germanium metal and 101,939 unpolished solar cell wafers. The unpolished solar cell wafers were created using 3,000 kg of germanium metal, so the total germanium inventory is equivalent 16,362 kilograms of germanium metal. The 2015 Report on Stockpile Requirements has a projection of a net shortfall 17,002 kilograms. This proposal requests 640 kg which is the difference between the current inventory and the projected shortfall.

Tungsten - 3% Rhenium Ingots. Tungsten – 3% rhenium ingots are used to produce Tungsten - 3% rhenium (W-3%Re) wire. W-3%Re wire is used for high-temperature filaments in high-power, high-frequency vacuum electronics components, including microwave tubes used in radar, communications, and electronic warfare systems. Defense systems requiring W-3%Re wire include the AN/SPY-1D radar that serves as the central component of the Aegis Weapons System deployed on Burke-class guided missile destroyers. The lone producer of W-3%Re wire for DoD applications ceased production in February 2013 and has indicated that they may cease production by 2017 of the W-3%Re ingots, from which the 3%Re wire is produced. Current W-3%Re microwave tube production is reliant on a dwindling stock of W-3%Re wire likely to be exhausted in early 2015. DoD is planning to implement a two-prong

solution to this supply chain issue. The first is to establish domestic production of W-3%Re wire at a new vendor using Defense Production Act Title III Program (DPA) authorities. The second is to establish a Stockpile of W-3%Re ingots to mitigate the impact of ingot production cessation does occur. The stockpile of ingot will allow production of the wire, which in turn will allow the U.S. to continue microwave tube production in the event of a national emergency. The DPA has been authorized; and award for domestic production of wire is expected to occur within the coming months. W-3%Re supply issues and DoD's risk mitigation plan will be addressed in the 2015 Report.

<u>Boron carbide powder</u>. Boron carbide (B4C) is used in armor, nuclear and industrial applications, including body armor. Boron carbide supply chain concerns are focused primarily on body armor, since need for body armor increases significantly during wartime surge and sustainment requirements. B4C-based body armor utilizes solid B4C ceramic plates, which are made in the U.S. from a refined B4C powder. Refined B4C powder is produced from crude B4C powder. Currently, DoD supply chains rely primarily on foreign sources for refined B4C powder. DoD supply chains currently are 100 percent foreign-reliant for the crude B4C powder. Potentially, the only B4C crude production plant located in a NATO country may cease production for economic reasons. A shutdown would cause reliance on production of crude in Ukraine, India, and China. Adding inventories of B4C crude and refined ceramic grade B4C will address possible shortfalls. The 2015 Report predicts a B4C shortfall, and that a stockpile of approximately 88.5 metric tons of refined, ceramic grade B4C should be sufficient for a one-year national emergency requirement.

<u>Europium</u>. Europium is a medium/heavy rare earth element used mostly in phosphors for TV displays, computer screens, linear fluorescent lightbulbs (LFLs), compact fluorescent lighting (CFLs), and sensors. It is also used in small quantities for ceramics, specialty glass additives, and lasers. For DoD, europium is primarily used in limited quantities for specialized equipment and applications such as phosphors (red and blue), lasers for range finders and target designators and, heads-up displays. It has been determined that the supply chain for europium would become vulnerable in the event of a national emergency. Further, given the projected displacement of fluorescent lighting in favor of LEDs, there is a high potential that phosphor producers will exit the business as demand for rare-earth based phosphors used in lighting deteriorates. Notwithstanding this possibility, DoD will still remain dependent on rare-earth phosphors for avionics, lighting, and head's-up displays for the foreseeable future. Therefore, the establishment of a 35 metric ton stockpile of europium oxide over a four year period is recommended.

<u>Silicon carbide fibers</u>. Silicon carbide (SiC) fibers are key components in numerous critical aerospace and missile defense systems. SiC fibers are used to reinforce ceramic, plastic, and metal composites. One example defense application is lightweight, high temperature resistant and reduced radar cross section materials and structures for aerospace platforms including conventional manned and unmanned aircraft as well as new hypersonic ISR and strike vehicles. Another example is applications in rocket motor propulsion of importance to ballistic missile defense systems and space launch vehicles. The Department of Defense is currently reliant on a single, sole source for SiC fibers. The Defense Production Act Title III Office is currently working to build a domestic capability for certain specifications of SiC

fibers. This proposed SiC fiber stockpile acquisition would complement the Title III effort by stockpiling specifications of SiC fibers which might not necessarily be produced domestically by an awardee of the Title III program.

Budgetary Implications: The National Defense Stockpile Transaction Fund (T-Fund) has a projected FY 2015 ending unobligated balance of $220 million. Budgeted costs of the Stockpile average $58.9 million per annum for fiscal years 2017 - 2021. This budget includes the $55 million of funding required in order to execute the acquisitions being proposed. In lieu of an appropriation, the proposed disposal authorities will generate revenue and serve as the financing source to fund these acquisitions, provided that the revenues generated from these disposals are retained in the T-Fund rather than transferred to fund programs unrelated to the National Defense Stockpile. If enacted, this proposal would result in the T-fund balance being relatively constant going forward and will allow for unmitigated execution of the Stockpile mission as intended by the Strategic and Critical Materials Stock Piling Act.

	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Total**	**Appropriation**
FY 2017 Budget	**$67.56**	**$67.61**	**$57.92**	**$50.30**	**$51.11**	**$294.50**	National Defense Stockpile Transaction Fund
Proposed Acquisitions ($Millions)							
Material	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Total**	**Appropriation**
Carbon Fibers	$0.00	$3.86	$3.86	$3.86	$3.86	$15.43	National Defense Stockpile Transaction Fund
Tantalum	$2.08	$2.08	$2.08	$0.00	$0.00	$6.25	National Defense Stockpile Transaction Fund
Germanium Metal	$0.00	$0.00	$0.00	$0.00	$1.20	$1.20	National Defense Stockpile Transaction Fund
Tungsten - 3% Rhenium Metal	$4.16	$0.00	$0.00	$0.00	$0.00	$4.16	National Defense Stockpile Transaction Fund
Boron Carbide	$6.00	$6.00	$0.00	$0.00	$0.00	$12.00	National Defense Stockpile Transaction Fund
Europium	$0.00	$2.50	$2.50	$2.50	$2.50	$9.99	National Defense Stockpile Transaction Fund
Silicon Carbide Fibers	$2.00	$2.00	$2.00	$0.00	$0.00	$6.00	National Defense Stockpile Transaction Fund
TOTAL	**$14.24**	**$16.44**	**$10.44**	**$6.36**	**$7.56**	**$55.03**	National Defense Stockpile Transaction Fund

Proposed Disposal Revenues ($Millions)							
Material	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Total**	**Appropriation**
Beryllium Metal	$0.00	$0.00	$1.08	$1.08	$1.08	$3.24	National Defense Stockpile Transaction Fund
Chromium, Ferro	$23.87	$23.87	$23.87	$23.87	$17.94	$113.41	National Defense Stockpile Transaction Fund
Chromium Metal	$1.31	$1.31	$1.31	$1.31	$1.31	$6.56	National Defense Stockpile Transaction Fund
Platinum	$0.00	$0.00	$0.00	$0.00	$12.07	$12.07	National Defense Stockpile Transaction Fund
Tungsten Metal Powder	$0.00	$1.25	$1.25	$0.00	$0.00	$2.50	National Defense Stockpile Transaction Fund
Tungsten O&C	$22.17	$25.13	$18.48	$14.78	$14.78	$95.33	National Defense Stockpile Transaction Fund
TOTAL	**$47.35**	**$51.56**	**$45.99**	**$41.04**	**$47.18**	**$233.11**	National Defense Stockpile Transaction Fund
Net Impact of Acquisitions and Disposals	**$33.11**	**$35.12**	**$35.55**	**$34.69**	**$39.62**	**$178.08**	National Defense Stockpile Transaction Fund

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

Section 1406 would authorize appropriations for the Defense Inspector General in amounts equal to the budget authority requested in the President's Budget for fiscal year 2017.

Section 1407 would authorize appropriations for the Defense Health Program in amounts equal to the budget authority requested in the President's Budget for fiscal year 2017. However, this bill assumes enactment of legislation contained in section 701 to replace the current TRICARE Prime, Standard, and Extra options with a simplified TRICARE Health Plan that incorporates cost-sharing adjustments for certain members. Section 702 would also adjust the prescription drug co-payment for active duty families and all retirees regardless of age of the beneficiary. If sections 701 and 702 are not enacted, the authorization and appropriation for the Defense Health Program would need to be decreased by $57 million for up-front costs associated with the Consolidated Health Plan proposal and increased by $17 million to restore the savings assumed for the prescription drug co-payment proposal.

Subtitle B—Other Matters

Section 511, within the funds authorized for operation and maintenance under section 506, would authorize funds to be transferred to the Joint Department of Defense–Department of Veterans Affairs Medical Facility Demonstration Fund established by section 1704(a) of the National Defense Authorization Act for Fiscal Year 2010.

Section 512 would authorize appropriations for fiscal year 2017 for the Armed Forces Retirement Home in the amount equal to the budget authority requested in the President's Budget for fiscal year 2017.

TITLE XV—AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR OVERSEAS CONTINGENCY OPERATIONS

TITLE XVI—SERVICEMEMBERS CIVIL RELIEF ACT

This title would make a series of improvements to the Servicemembers Civil Relief Act (SCRA).

SEC. 1602. CLARIFICATION OF AFFIDAVIT REQUIREMENT.

This section would provide that the plaintiff in a default judgment action has an affirmative obligation to determine the defendant's military status and that the plaintiff must take steps accordingly, including reviewing and attaching available Department of Defense records.

SEC. 1603. EXTENSION OF PROTECTIONS FOR SERVICEMEMBERS AGAINST DEFAULT JUDGMENTS.

This section would specify basic obligations for attorneys appointed by a court to represent defendants in military service. It would impose an affirmative obligation on each such attorney to use due diligence to locate and contact the defendant and to act in that defendant's best interests. It would also provide a remedy for defendants in military service who have been harmed by the failure of a court appointed attorney to meet these affirmative obligations.

Section 201 of the SCRA provides that state courts must appoint an attorney to protect a servicemember's interests if the aforementioned servicemember is unable to attend court due to their military service. Essentially, the current statute requires the court appointed attorney to attempt to contact the servicemember to ascertain whether or not the servicemember wants to invoke the right to a stay or continuance under the SCRA. The court appointed attorney provisions in section 201 are a strong measure in support of a servicemember's rights. However, these rights can and should be strengthened through amendments to the SCRA.

In practice, there is often a close relationship between creditors and the court appointed attorney. Some courts currently allow the creditor to nominate a court appointed attorney to represent the servicemember, giving rise to the appearance of a conflict of interest. Adding a provision that directly prohibits the creditor or the creditor's attorney from selecting or having an

affiliation with the court appointed attorney will give a state court power to sanction a plaintiff or plaintiff's attorney if this provision is not followed.

Further, the changes to this section will elevate the requirements regarding proof of non-military status. Currently, plaintiffs and court appointed attorneys do not have a requirement to prove non-military status beyond an affirmation, leading to default judgments against servicemembers. This section would require plaintiffs to verify the defendant's status to the Court by producing a search in the DMDC database. If the DMDC Status Report shows that the servicemember is on active duty, then once the court has appointed an attorney, that court appointed attorney must provide the court with an affidavit that includes a freshly obtained (not a duplicate) DMDC Status Report, a statement that the court appointed attorney has reviewed the court record and pleadings to ascertain the servicemembers' contact information, a statement indicating dates, times, and methods that communications were attempted with the servicemember; and a statement saying the court appointed attorney was unable to contact the servicemember, a statement that member was contacted and wishes to enforce their rights under the SCRA, or a statement that the member was contacted and requests for the case to proceed following the normal rules of the court.

These provisions would greatly strengthen the rights of servicemembers under the SCRA and will permit the servicemember the opportunity to invoke their rights via the court appointed attorney in the court room setting. Further, use of the DMDC database will give plaintiffs confidence that they are not acting in violation of the SCRA.

Currently, section 201 of the Servicemembers Civil Relief Act (SCRA) provides that state courts must appoint an attorney to protect a servicemember's interests if the aforementioned servicemember is unable to attend court due to their military service. Essentially, the current statute requires the court appointed attorney to attempt to contact the servicemember to ascertain whether or not the servicemember wants to invoke the right to a stay or continuance under the SCRA. The court appointed attorney provisions in section 201 are a strong measure in support of a servicemember's rights. However, these rights can and should be strengthened through amendments to the SCRA.

In practice, there is often a close relationship between creditors and the court appointed attorney. Some courts currently allow the creditor to nominate a court appointed attorney to represent the servicemember, giving rise to the appearance of a conflict of interest. Adding a provision that directly prohibits the creditor or the creditor's attorney from selecting or having an affiliation with the court appointed attorney will give a state court power to sanction a plaintiff or plaintiff's attorney if this provision is not followed.

Further, the changes to this section will elevate the requirements regarding proof of non-military status. Currently, plaintiffs and court appointed attorneys do not have a requirement to prove non-military status beyond an affirmation, leading to default judgments against servicemembers. This section would require plaintiffs to verify the defendant's status to the Court by producing a search in the DMDC database. If the DMDC Status Report shows that the servicemember is on active duty, then once the court has appointed an attorney, that court appointed attorney must provide the court with an affidavit that includes a freshly obtained (not a

duplicate) DMDC Status Report, a statement that the court appointed attorney has reviewed the court record and pleadings to ascertain the servicemembers' contact information, a statement indicating dates, times, and methods that communications were attempted with the servicemember; and a statement saying the court appointed attorney was unable to contact the servicemember, a statement that member was contacted and wishes to enforce their rights under the SCRA, or a statement that the member was contacted and requests for the case to proceed following the normal rules of the court.

These provisions would greatly strengthen the rights of Servicemembers under the SCRA and will permit the servicemember the opportunity to invoke their rights via the court appointed attorney in the court room setting. Further, use of the DMDC database will give plaintiffs confidence that they are not acting in violation of the SCRA.

SEC. 1604. RESIDENCY OF DEPENDENTS OF MILITARY PERSONNEL FOR VOTING PURPOSES.

This section would provide that a dependent family member of a servicemember who is accompanying the servicemember in addition to the servicemember's spouse (for example, an adult dependent child or a dependent parent) will have the protections of section 705(b).

SEC. 1605. INCREASE IN CIVIL PENALTIES.

This section would double the dollar amount of civil penalties currently authorized.

SEC. 1606. ENFORCEMENT BY THE ATTORNEY GENERAL.

This section would grant the Attorney General authority to issue civil investigative demands in investigations under the SCRA. The authority is similar to that provided under the False Claims Act, 31 U.S.C. 3733, except that it does not include the authority to compel oral testimony or sworn answers to interrogatories. This section also clarifies that the Attorney General's authority to enforce the Act applies to violations of the Act that occurred before enactment of the Veterans' Benefits Act of 2010, Public Law 11-275 (Oct. 13, 2010), which made such authority explicit.

SEC. 1607. APPLICATION OF PRIVATE RIGHT OF ACTION.

This section would clarify that a private right of action may be filed by any person aggrieved by a violation of the SCRA that occurred before enactment of the Veterans' Benefits Act of 2010, Public Law 111-275 (Oct. 13, 2010), which made such right explicit.

SEC. 1608. DEFINITION OF MILITARY ORDERS AND CONTINENTAL UNITED STATES.

This section would add definitions for "military orders" and "continental United States." The amended definition of "military orders" will allow for use of a commanding officer letter in

place of orders, similar to the language proposed in S. 3322 in the 112th Congress, so that this provision would apply to the whole SCRA, and not just to lease terminations.

SEC. 1609. ORAL NOTICE SUFFICIENT TO INVOKE INTEREST RATE CAP.

This section would allow servicemembers to give oral or written notice when they wish to invoke the interest rate cap, instead of just written notice, and would require the creditor to retain a record of the servicemember's oral or written notification. It also would allow a servicemember to invoke the interest rate cap without sending in a copy of his or her military orders. Upon receipt of notice, the creditor could conduct a search of Department of Defense records available through the Defense Manpower Data Center (DMDC). If those records confirm military service, the creditor shall grant the interest rate benefit, effective as of the date on which the servicemember was called to military service. If the records do not confirm military service, the creditor may require the servicemember to provide a copy of his or her military orders.

SEC. 1610. NON-DISCRIMINATION PROVISION.

This section would provide for a nondiscrimination provision that is modeled after a similar provision in S. 3322 in the 112th Congress.

SEC. 1611. EXTENSION OF PROTECTION AGAINST REPOSSESSION FOR INSTALLMENT SALES CONTRACTS.

This section would provide harmonization of the tail coverage periods for installment sales contracts in section 302 to match mortgages in section 303.

SEC. 1612. HARMONIZATION OF SECTIONS.

This section would change "filed" to "pending" in section 303(b), so that servicemembers get stays of proceedings or adjustments of the obligation even if the action was filed before they entered service, or during a break in service. This section would also remove "with a return made and approved by the court" to harmonize it with other provisions.

SEC. 1613. EXPANSION OF PROTECTION FOR TERMINATION OF RESIDENTIAL AND MOTOR VEHICLE LEASES.

This section would extend lease termination protection to individuals ordered to move onto a military base. The language is similar to section 103 of the mark up for S. 3322 in the 112th Congress. In addition, this section provides that the rights with respect to termination of residential and motor vehicle leases conferred in section 305 may not be waived.

SEC. 1614. MILITARY FAMILY PROFESSIONAL LICENSE PORTABILITY.

This section would create a requirement that a State in which a military spouse resides due to the servicemembers' orders recognize the spouse's professional licenses that have been

awarded by other States. The Administration has called upon all 50 States to pass this type of legislation by 2014 (approximately 25 States currently have laws on this).

SEC. 1615 . ENHANCED PROTECTION OF SERVICEMEMBERS UNDER SERVICEMEMBERS CIVIL RELIEF ACT RELATING TO CERTAIN CONTRACT PROVISIONS.

This section would increase protections for servicemembers entering into contracts that might contain arbitration clauses, forum selection clauses, and choice of law clauses.

Arbitration Clauses: Arbitration clauses are legal contractual terms that are often added as boilerplate language in many contracts, especially consumer contracts and residential leases. Generally, they preclude a party from bringing a lawsuit in court (even small claims court) against the opposing party. This forces the complaining party to dispute any claim against an opposing party before an arbiter. Arbitration clauses are often used to the detriment of servicemembers because they generally pick a specific arbitration forum that is not easily accessible to the servicemember, e.g. not located in the state where the servicemember is currently assigned to a duty station. This leaves the servicemember unable to seek redress for alleged wrongs committed by the opposing party without incurring significant economic hardship.

The proposed language would negate mandatory arbitration clauses involving servicemembers. If a dispute arises between contracting parties, they have the cost effective option of arbitration available, so long as both parties agree in writing to such a course of action.

Forum Selection Clauses: Forum selection clauses are similar to arbitration clauses in that they require parties of a contract to resolve legal disputes in a certain forum. Essentially, the contractual clause specifies the location where a suit may be brought, and the particular location is typically designated by the drafter of the contract, which is often the creditor. In most circumstances, these clauses have been deemed legally sufficient to require litigants to bring suit in the chosen forum. *See, e.g.*, *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 593-96 (1991); *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972) ("[Forum selection] clauses are prima facie valid and should be enforced unless enforcement is shown by the resisting party to be 'unreasonable' under the circumstances."); *S.K.I. Beer Corp. v. Baltika Brewery*, 612 F.3d 705, 708 (2d Cir. 2010) ("If the forum selection clause was communicated to the resisting party, has mandatory force and covers the claims and parties involved in the dispute, it is presumptively enforceable."); 14D Charles Alan Wright, et al., Fed. Prac. & Proc. Juris. § 3803.1 (4th ed.) ("Today … the common understanding is that these provisions are prima facie valid and should be enforced unless unreasonable under the circumstances."). For military members, these clauses often make defending oneself in court onerous, given the frequent relocation required by military service. Many creditors target unsuspecting servicemembers by establishing their business adjacent to bases, offering highly marked up products and financing programs. These creditors often insert a forum selection clause into the contract, choosing a forum favorable to creditors that is generally far away from the place where the contract is being entered into. If there is a dispute on the contract, servicemembers frequently lack the mobility to defend themselves in the creditor chosen jurisdiction. This often results in a default judgment against the servicemember. Similarly, if the servicemember has a cause of action, they can only bring

suit in the jurisdiction found within the forum selection clause. All of these factors create a situation where servicemembers cannot effectively defend themselves or afford to bring a cause of action.

The proposed language would give servicemembers extra protections to negate the effects of mandatory forum selection clauses in contracts. If a dispute arises between the contracting parties, they have the option to agree to a given forum so long as both parties agree in writing to such a course of action. If the parties cannot agree to a forum, the case will proceed as if there was no forum selection clause in the contract.

Choice of Law Clauses: Choice of law clauses function similarly to forum selection and arbitration clauses. The difference, however, is that they do not bind a party to a certain court or jurisdiction. The choice of law clause names which body of law (e.g., Alaska state law) will be applied by whatever court has proper personal and subject matter jurisdiction over the parties. Thus, a Florida court could be left to interpret and use Alaskan law in their courts. There is the potential for creditors to select and use certain state law that is favorable to the creditor and detrimental to the rights of the servicemember.

The proposed language would expand servicemembers' rights by giving them the option not to be bound by choice of law clauses within contracts.

Section 107 Waiver of Rights Pursuant to Written Agreement: This language is necessary to enact the changes to section 102 of SCRA. The added language makes it impossible to waive a provision of the SCRA until after a dispute has arisen for all contracts involving servicemembers. Theoretically, without this language, a servicemember could still waive their rights despite the strong language in section 102. This section simply reuses the section 102 language to protect the rights of the servicemember.

Subsection (b) of Section 205: This language would allow plaintiffs to proceed with cases against servicemember spouses who might be codefendants in a case. Subsection (c) of section 205 of the SCRA exempts sections 202 and 701 from subsection (b) of section 205. The protections relating to arbitration clauses, forum selection clauses, and choice of law clauses found in section 102, if enacted, will be diminished if plaintiffs can proceed against the servicemember's spouse. Adding section 102 to the exempted list would ensure that servicemembers are not indirectly harmed through collateral action against their spouses. Oftentimes, when a servicemember is deployed they do not have the opportunity to consult with their spouse to preserve their legal rights and interests. Further, in many instances, a servicemember spouse might have interests that are directly contrary to the servicemember. Exempting section 102 from section 205 would help enact the protections meant to shield servicemembers from harmful contractual provisions.

SEC. 1616. DETERMINATION OF RESIDENCE OR DOMICILE FOR TAX PURPOSES OF SPOUSES OF MILITARY PERSONNEL.

This section would ensure that all military spouses receive equal treatment under the Servicemembers Civil Relief Act (SCRA). Currently, the SCRA, as amended by section 3 of the Military Spouses Residency Relief Act (MSRRA) (Public Law 111-97), allows some military spouses to maintain their state residency upon a permanent change of station (PCS). Currently,

section 511(a)(2) of the SCRA requires military spouses to share the same legal residence or domicile as the servicemember in order for the SCRA's residency and tax protections to apply. This requirement to share the same legal residence or domicile results in a substantial number of military spouses being ineligible to avail themselves of the residency and state tax protections otherwise afforded under the SCRA. Removing the shared residency requirement from section 511(a)(2) of the SCRA will ensure all military spouses receive the protections of the SCRA and alleviate the onerous residency and tax burdens associated with a PCS.

Before the MSRRA amended the SCRA in 2009, all military spouses were required to re-establish legal residency in each new state following a spouse's permanent change of station and cut legal ties with their home state. Conversely, servicemembers did not lose or change their legal residence due to the same move because the SCRA protected both the servicemember's legal residence and, as a result, their military income from state taxation in the non-domiciliary state. The servicemember did, however, have the option to affirmatively change his or her residency status if it would be advantageous to do so. The military spouse had no option; to accompany the servicemember, the military spouse had to establish legal residence in the new state of residence. The absence of the SCRA's residency protections for military spouses caused significant hardships upon military families when it came to state taxation of the military spouse's income. The MSRRA allows the military spouse to be treated the same as the servicemember as long as they share the same state of legal residence.

Without the protections of the SCRA extending to both the servicemember and military spouse, military families likely find their state tax liability increased upon a permanent change of station. Military spouses can face a higher incidence of state tax due to moving to a state with a higher income tax rate. There are significant differences in tax rates within states; some states impose no income tax while some have as high as an 11 percent marginal tax rate. If the military spouse was forced to move with the servicemember to a state with a higher income tax rate, the result could be a net decrease in income available to support the military family. In addition to a potential loss in income, the military spouse would also face an increased administrative burden of filing multiple state tax returns. These were the residency and tax burdens that the MSRRA was intended to resolve. Yet, the statue has not resolved these burdens for all military spouses, which is fundamentally unfair and can cause substantial financial hardship for a substantial number of military families.

Without shared legal residence with the servicemember, the military spouse is left in the same position as before the MSRRA was enacted. Yet, shared legal residence of a military couple can only occur in one of two ways. First, a married couple whom established a state of domicile before one enters active duty service will be able to maintain their shared legal residence no matter the location of military service. However, if a servicemember is stationed outside his state of legal residence and marries in the physical location of his military service, the newly married military couple has two options to have the SCRA apply to the military spouse. One option for the military couple would be for the servicemember to abandon his legal residence and establish domicile in the spouse's state of residence. The military couple would then share the same legal residence and could maintain it in future assignments. The military couple could also seek assignment, if available, in the servicemember's state of legal residence, thereby allowing the military spouse to establish and assume the same legal residence once

stationed in the servicemember's home state. But assignments are based upon the needs of the Service, and until a favorable assignment occurs, many military spouses are without the residency and tax protections afforded under the SCRA. The SCRA should not require military families to make difficult choices or wait for chance to determine the scope of its protections for military spouses.

All military spouses, no matter their original states of legal residence upon marriage to a servicemember, equally bear the burdens of a permanent change of station. Moreover, requiring a military couple to decide which legal residence to abandon potentially puts military couples at odds in deciding where they can both establish legal residence. Arbitrarily denying residency and tax burden protections based upon circumstance, and possibly increasing the burdens on certain military couples, is fundamentally unfair and is contrary to the equity promised in the passage of the MSRRA. This section will ensure that the SCRA's residency and state tax protections are afforded to all military spouses who accompany their servicemembers to a new state upon a PCS.

Section 1616 would ensure that all military spouses receive equal treatment under the Servicemembers Civil Relief Act (SCRA). Currently, the SCRA, as amended by section 3 of the Military Spouses Residency Relief Act (MSRRA) (Public Law 111-97), allows some military spouses to maintain their state residency upon a permanent change of station (PCS). Currently, section 511(a)(2) of the SCRA requires military spouses to share the same legal residence or domicile as the servicemember in order for the SCRA's residency and tax protections to apply. This requirement to share the same legal residence or domicile results in a substantial number of military spouses being ineligible to avail themselves of the residency and state tax protections otherwise afforded under the SCRA. Removing the shared residency requirement from section 511(a)(2) of the SCRA will ensure all military spouses receive the protections of the SCRA and alleviate the onerous residency and tax burdens associated with a PCS.

Before the MSRRA amended the SCRA in 2009, all military spouses were required to re-establish legal residency in each new state following a spouse's permanent change of station and cut legal ties with their home state. Conversely, servicemembers did not lose or change their legal residence due to the same move because the SCRA protected both the servicemember's legal residence and, as a result, their military income from state taxation in the non-domiciliary state. The servicemember did, however, have the option to affirmatively change his or her residency status if it would be advantageous to do so. The military spouse had no option; to accompany the servicemember, the military spouse had to establish legal residence in the new state of residence. The absence of the SCRA's residency protections for military spouses caused significant hardships upon military families when it came to state taxation of the military spouse's income. The MSRRA allows the military spouse to be treated the same as the servicemember as long as they share the same state of legal residence.

Without the protections of the SCRA extending to both the servicemember and military spouse, military families likely find their state tax liability increased upon a permanent change of station. Military spouses can face a higher incidence of state tax due to moving to a state with a higher income tax rate. There are significant differences in tax rates within states; some states impose no income tax while some have as high as an 11 percent marginal tax rate. If the

military spouse was forced to move with the servicemember to a state with a higher income tax rate, the result could be a net decrease in income available to support the military family. In addition to a potential loss in income, the military spouse would also face an increased administrative burden of filing multiple state tax returns. These were the residency and tax burdens that the MSRRA was intended to resolve. Yet, the statue has not resolved these burdens for all military spouses, which is fundamentally unfair and can cause substantial financial hardship for a substantial number of military families.

Without shared legal residence with the servicemember, the military spouse is left in the same position as before the MSRRA was enacted. Yet, shared legal residence of a military couple can only occur in one of two ways. First, a married couple whom established a state of domicile before one enters active duty service will be able to maintain their shared legal residence no matter the location of military service. However, if a servicemember is stationed outside his state of legal residence and marries in the physical location of his military service, the newly married military couple has two options to have the SCRA apply to the military spouse. One option for the military couple would be for the servicemember to abandon his legal residence and establish domicile in the spouse's state of residence. The military couple would then share the same legal residence and could maintain it in future assignments. The military couple could also seek assignment, if available, in the servicemember's state of legal residence, thereby allowing the military spouse to establish and assume the same legal residence once stationed in the servicemember's home state. But assignments are based upon the needs of the Service, and until a favorable assignment occurs, many military spouses are without the residency and tax protections afforded under the SCRA. The SCRA should not require military families to make difficult choices or wait for chance to determine the scope of its protections for military spouses.

All military spouses, no matter their original states of legal residence upon marriage to a servicemember, equally bear the burdens of a permanent change of station. Moreover, requiring a military couple to decide which legal residence to abandon potentially puts military couples at odds in deciding where they can both establish legal residence. Arbitrarily denying residency and tax burden protections based upon circumstance, and possibly increasing the burdens on certain military couples, is fundamentally unfair and is contrary to the equity promised in the passage of the MSRRA. This legislative proposal will ensure that the SCRA's residency and state tax protections are afforded to all military spouses who accompany their servicemembers to a new state upon a PCS.

Budget Implications: There are no resource requirements or proposed offset associated with this proposal.

Changes to Existing Law: This proposal would make the following change to the Servicemembers Civil Relief Act (50 U.S.C. App. 571):

§. 571. Residence for tax purposes

(a) **Residence or domicile**

(1) **In general**

A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(2) **Spouses**

A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders ~~if the residence or domicile, as the case may be, is the same for the servicemember and the spouse~~.

(b) **Military service compensation**

Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

(c) **Income of a military spouse**

Income for services performed by the spouse of a servicemember shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders.

(d) **Personal property**

(1) **Relief from personal property taxes**

The personal property of a servicemember or the spouse of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

(2) **Exception for property within member's domicile or residence**

This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's or the spouse's domicile or residence.

(3) **Exception for property used in trade or business**

This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) **Relationship to law of State of domicile**

Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

(e) **Increase of tax liability**

A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

(f) **Federal Indian reservations**

An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

(g) **Definitions**

For purposes of this section:

(1) **Personal property**

The term "personal property" means intangible and tangible property (including motor vehicles).

(2) **Taxation**

The term "taxation" includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

(3) **Tax jurisdiction**

The term "tax jurisdiction" means a State or a political subdivision of a State.

TITLE XVII—UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT

SEC. 1701. PRE-ELECTION REPORTING REQUIREMENTS ON AVAILABILITY AND TRANSMISSION OF ABSENTEE BALLOTS.

This section is substantially the same as the Department of Justice 2011 proposal as coordinated with the Department of Defense and This section would amend section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to require that States submit two pre-election reports to the Departments of Justice and Defense on the status of ballot transmission to military and overseas voters. It requires that States submit the first report 55 days before the election and identify any jurisdictions that may not be able to send ballots by the 46th day before the election. It requires that States submit the second report 43 days before the election and certify whether each of its jurisdictions transmitted its ballots by the 46th day. These two pre-election reports would provide the Department with information necessary to assess, at the most critical and timely stages, whether enforcement actions are needed, and alleviate the need to rely on voluntary reporting by the States.

SEC. 1702. TRANSMISSION REQUIREMENTS; REPEAL OF WAIVER PROVISION.

Except as noted below, the substance of this section is substantially the same as section 202 of the Department of Justice 2011 proposal as coordinated with the Department of Defense. In addition, it includes section 204 of the 2011 proposal, repeal of the waiver provision.

This provision, which would change the 45-day deadline under the MOVE Act to a 46-day deadline, addresses the substance of section 205 of the Department of Justice's 2011 proposal. The 2011 proposal offered a "Saturday Mailing Date Rule," while maintaining the 45-day deadline. Initially, Senate staff proposed the 46-day rule as a cleaner way of accomplishing the same goal of clarifying the general ballot deadline. We propose incorporating the 46-day deadline in our proposals. Conforming changes to the 46 day deadline are made throughout this proposal.

This section would amend section 102 of UOCAVA to require States that have failed to mail absentee ballots by the 46-day deadline to voters who request ballots by the 46th day to send them by express delivery, and to require States that have failed to mail absentee ballots by the 41st day to enable such voters to return their ballots by express delivery. These requirements would increase the likelihood that ballots arrive in time for the voters to receive, mark, and return the ballots by Election Day, and would create a strong financial incentive for strict State compliance with the 46-day rule. The 2011 proposal triggered the requirement to provide for the express return of ballots at the State's expense after the 40th day, *i.e.*, when a ballot was sent late by 5 days or more. The 41st day reference here (in section 102(g)(1)(B)(ii)) conforms to the new 46 day transmission standard and provides the same 5 day trigger we envisioned in our 2011 proposal.

This section would also repeal UOCAVA's hardship waiver provision, section 102(g), which currently waives the 45-day deadline for States that cannot comply with the deadline due to an undue hardship created by (1) the date of the State's primary election; (2) a delay in generating ballots due to a legal contest; or (3) a prohibition in the State's Constitution. The Department's experience with the waiver provision during the 2010 Federal general election cycle shows that its marginal benefits are outweighed by its downsides, including the significant enforcement and administrative resources expended on its implementation. All 11 States that applied for a waiver did so based on the date of their primary elections, and a majority of them

were denied a waiver, which required them to take additional, immediate steps to come into compliance at a time when the Federal general election date was fast approaching. Repealing the waiver provision would strengthen the protections of the Act by ensuring that the 46-day deadline is the standard that all States should meet, even if it requires changing the date of their primary elections. A uniform, nationwide standard ensures that all military and overseas voters are afforded its benefits equally.

Section 102(g)(2) would be amended because the MOVE Act language (currently in section 102(a)(8)(b) of UOCAVA) affords no specific requirement to ensure ballots requested between 45 and 30 days of the election (or a later date where states accepted ballot requests closer to the election) are promptly transmitted to voters. Some States have a law or practice of sending ballots promptly; others do not. There remains confusion as to what this provision mandates, if anything. This amendment would ensure that that ballot requests are promptly transmitted by directing that ballots be sent within one business day of receipt.

SEC. 1703. CLARIFICATION OF STATE RESPONSIBILITY, CIVIL PENALTIES, AND PRIVATE RIGHT OF ACTION.

This section is substantially the same as the Department of Justice 2011 proposal as coordinated with the Department of Defense. This section would amend section 105 of UOCAVA to clarify that States bear the ultimate responsibility for ensuring timely transmission of absentee ballots; to provide for civil penalties for violations of the Act in appropriate circumstances; and to provide for an express private right of action. The clarifying language in this amendment would preclude State officials from successfully arguing, contrary to Congress's intent and the Act's legislative history, that they lack sufficient authority to be held responsible for localities' failures to timely send overseas ballots. This section also would repeal section 576 of the Military and Overseas Voter Empowerment Act (52 U.S.C. 20302 note), which addresses the delegation of administrative control of absentee voting, to avoid confusion regarding State responsibility for compliance with the Act. The inclusion of civil penalties and an express private right of action strengthens the Act's protections by providing additional incentives for State compliance.

SEC. 1704. TECHNICAL CLARIFICATIONS TO CONFORM TO 2009 MOVE ACT AMENDMENTS RELATED TO THE FEDERAL WRITE-IN ABSENTEE BALLOT

Section 581 of the MOVE Act extended UOCAVA voters' eligibility to use a Federal Write-In Absentee Ballot (FWAB) to all elections for Federal office, effective December 31, 2010. Prior to that time, FWABs could only be cast in federal general elections. Section 581 effects a number of conforming amendments, but fails to revise these two other FWAB references in the Act.

SEC. 1705. TREATMENT OF BALLOT REQUESTS.

This section would amend section 104 of UOCAVA and is based in part on section 206 of the Department of Justice's 2011 proposal as coordinated with the Department of Defense. As in the 2011 proposal, this section would amends section 104 of UOCAVA to add overseas

civilian voters to a provision that currently requires States to accept or process absentee ballot requests from military voters received in the same calendar year as the Federal election. The inclusion of overseas civilian voters in this provision is consistent with other provisions of the Act.

This proposal would also restore, in part, language the 2009 MOVE Act deleted related to treating a ballot application as valid for subsequent elections. Rather than allowing a voter to use the application to request ballots through two general election cycles as the pre-MOVE Act law did, this proposal would provide that applications are valid for one general election cycle, which includes any runoff elections that are held after that general election, a provision contained in Senator Brown's bill (S. 3322). We propose one addition to extend the period to cover any special Federal elections that occur between the general election and the end of the following year. It also would provide that all absent uniformed services voters and overseas voters have the option of applying for ballots for all Federal elections held during the period prescribed by this section.

SEC. 1706. INCLUSION OF NORTHERN MARIANA ISLANDS IN THE DEFINITION OF "STATE" FOR PURPOSES OF THE UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT.

This section is substantially the same as section 207 of the Department of Justice 2011 proposal coordinated with the Department of Defense. This section would amend UOCAVA to make its requirements applicable to the Commonwealth of the Northern Mariana Islands, which, as of 2008, has a nonvoting Delegate to the House of Representatives.

SEC. 1707. REQUIREMENT FOR PRESIDENTIAL DESIGNEE TO REVISE THE FEDERAL POST CARD APPLICATION (FPCA) TO ALLOW VOTERS TO DESIGNATE BALLOT REQUESTS.

The provision for FVAP to revise the FPCA was included in the Department of Justice 2011 proposal as coordinated with the Department of Defense. We revised the language to conform to the change referenced in section 1705, and contained in Senator Brown's bill (S. 3322), which would allow voters to request ballots through the next general election, and included the additional option we propose to extend it to special Federal elections that may be held after the general election through the following calendar year.

SEC. 1708. REQUIREMENT OF PLURALITY VOTE FOR VIRGIN ISLANDS AND GUAM FEDERAL ELECTIONS.

The MOVE Act required that absentee ballots be transmitted 45 days in advance of an election for Federal office. The Department of Justice has interpreted this requirement to apply to all Federal elections, including runoff elections, and the United States Court of Appeals for the Eleventh Circuit recently affirmed that interpretation. See *U.S. v. State of Alabama*, No. 14-11298 (11th Cir. Feb. 12, 2015), *reh'g denied* April 21, 2015.

In response to the MOVE Act's 45-day deadline, some States changed their State laws to allow sufficient time in their election calendars to transmit runoff ballots if a primary election triggers a runoff. The Virgin Islands and Guam are not able to make a similar change to their runoff election calendars because 48 U.S.C. 1712 requires that runoff elections be held within 14 days after a Federal general election, if no candidate receives a majority of the votes cast at the general election. This proposal would provide that the Delegates for the Virgin Islands and Guam be elected by plurality vote. It is consistent with the general rule for the election of Delegates to the other territories and the District of Columbia.

SEC. 1709. EXTENSION OF REPORTING DEADLINE FOR THE ANNUAL REPORT ON THE ASSESSMENT OF THE EFFECTIVENESS OF ACTIVITIES OF THE FEDERAL VOTING ASSISTANCE PROGRAM.

Section 1709 would change the deadline to submit the annual report on the effectiveness of activities of the Federal Voting Assistance Program (FVAP) from March 31 of every year to September 30 of odd-numbered years. It also would clarify that the information submitted in the report should cover the previous calendar year – the year in which the regularly scheduled elections for Federal office occurred. Therefore, the Department of Defense seeks these changes to ensure that the report provides the best quality information about FVAP's program, voter registration and participation in the election and enhance the validity of post-election survey results.

The Department of Defense strongly believes that developing and publishing this report for odd-numbered calendar years in which few Federal elections occur does not provide sufficient information to warrant the time, effort and expense expended in preparing the report. Few elections for Federal office occur in odd-numbered years. In 2009 there were a total of only four elections for Federal office. Again in 2011, only four elections occurred. In 2013 there were eight elections for federal office; there were three in 2015.

Evaluation and analysis of FVAP activities for special primary or general elections requires the Department of Defense to obtain the election data from the local jurisdiction involved and, in many cases, the specific data required to make accurate analysis is not available or is not available in a timely manner. The Department of Defense has concluded that analysis of odd-numbered year elections could lead to poor policy decisions based upon incomplete data and/or conclusions which may not be valid in even-numbered election years, which have greater public participation and FVAP activity.

In addition, the Department of Defense has determined that the post-election survey results for even-numbered year reports and quadrennial analysis cannot be collected, processed, analyzed and reported by the current March 31 deadline. General elections for Federal office are held in November (potentially with some States conducting run-off elections for Federal office in December). The FVAP's survey instruments will be fielded in January and the Department believes they need to be open for at least three months to garner sufficient participation to make them statistically valid. Further, for the Department to compare the voting behavior rates of active duty military members with those of the citizen voting age population, it must compare data released by other federal agencies. However, the data are historically not available until the

summer months following a general election. Thus, the March 31 deadline provides little time after the elections to collect, synthesize and thoughtfully analyze post-election survey data to base program evaluations and policy decisions. Accordingly, the Department of Defense recommends that the reporting deadline be extended from March 31 to September 30, and that the report only be submitted in odd-numbered years.

SEC. 1710. TREATMENT OF POST CARD FORM REGISTRATIONS.

This provision addresses the concern that some jurisdictions may be treating voters who register to vote by the Federal post card application prescribed by UOCAVA as "temporary" registrants whose voter registration expires when the voters' absentee ballot request expires (under current law that request expires after just one year). This new provision would clarify that UOCAVA registrants will not have their voter registrations cancelled except as allowed under the National Voter Registration Act of 1993 (i.e., at the request of the registrant; as provided by State law, by reason of criminal conviction or mental incapacity; or in accordance with the procedures and notice requirements of a general removal program governed by the NVRA). This is a new section to address an issue that arose during the Department's technical assistance process in connection with the SENTRI Act. Section 104 of the SENTRI Act (S. 1728) would add a provision with nearly identical language.

DIVISION B –MILITARY CONSTRUCTION AUTHORIZATIONS

TITLE XXI—ARMY MILITARY CONSTRUCTION

TITLE XXII—NAVY MILITARY CONSTRUCTION

TITLE XXIII—AIR FORCE MILITARY CONSTRUCTION

TITLE XXIV—DEFENSE AGENCIES MILITARY CONSTRUCTION

TITLE XXV—NORTH ATLANTIC TREATY ORGANIZATION SECURITY INVESTMENT PROGRAM

TITLE XXVI—GUARD AND RESERVE FORCES FACILTIES

TITLE XXI—BASE REALIGHNMENT AND CLOSURE ACTIVITIES

TITLE XXVIII—MILITARY CONSTRUCTION GENERAL PROVISIONS

Section 2801 would allow the Department of Defense (DoD) to increase the scope of a military construction project by up to 10 percent above the amount authorized by Congress after notifying the appropriate committees of Congress and waiting the appropriate time period.

The Department submits its annual requests for military construction projects well before the projects are fully designed. The budget timeline requires DoD to prepare project documentation (including description, size, price, and justification) to Congress for authorization at least 15 months in advance of the award of construction contracts. DoD uses this time to concurrently refine projects and either complete project design work, or prepare packages for soliciting design-build proposals. Therefore, although the functional requirements of a project are generally well defined in a DD Form 1391, for the preceding reasons, the primary and supporting facilities quantities shown are only approximations of the actual quantities that will be needed to fulfill the authorized purpose of the project. Performing more advanced design on the projects to better define the scope quantities on the DD Forms 1391 would not be cost effective, and it would be inconsistent with the design build acquisitions that are used for the majority of projects.

During this 15-month (or longer) period, increases in project scope quantities can occur for generally two reasons. Functional changes are the first reason as DoD Components may refine their facility sizing criteria (e.g., standard designs) to respond to late developing mission changes or to incorporate important lessons learned. Technical design changes are the second reason as designers may identify emerging technologies or life-safety issues that lead to the need for additional space, e.g., thicker wall sections for energy conservation, wastewater collection and reuse, active and passive solar energy collection, high-efficiency heating, ventilating, and air-conditioning (HVAC) components, and egress requirements. Typically, space increases for either reason are modest and may generate no associated increase in overall cost. However, some space increases, primarily associated with functional changes, may exceed five percent.

One example for needing the flexibility to increase scope is in the case where a value-engineering study during design shows that it is more economical for buildings to have self-contained HVAC systems than to be connected to a central energy plant. However, self-contained HVAC systems require larger mechanical rooms that would marginally increase the square footage of a building. Without scope flexibility, the choices would be either to forgo the cost saving measure, reduce the space of needed functional areas, or delay the project for at least one year to obtain authorization of the additional square footage.

The type of acquisition can also spur a need for scope flexibility. Design-build, which has become the most widely used method for executing military construction projects, allows the government, by using requirements based specifications, to benefit from innovation and alternate solutions developed in the private sector. Design-Build allows competing proposers the opportunity to identify efficiencies and alternative engineering solutions that meet the government's functional requirements within the government's stated criteria. By restricting a project to the precise square footage and engineering attributes stated in a DD Form 1391, the government would hinder industry's ability to contribute towards better design solutions and undermine many of the benefits achieved under the Design-Build approach. For example, the military family housing construction program, which started using design-build in the 1970's quickly recognized that for the government to achieve the best value, proposers needed the flexibility to offer their standard homes, which for same number of bedrooms and features still varied slightly in square footage between different home builders.

In view of a DoD Inspector General report on scope of work (DoDIG-2012-057, February 27, 2012), the Department recognizes that there have been situations where insufficient oversight was being provided to ensure the scope authorized by Congress was not being exceeded. As a result, internal management controls are being established to more clearly define and measure scope. Nevertheless, the current prohibition on any increase to facility size is detrimental to providing facilities that support important missions in a timely and cost efficient manner. Without relief, inevitable changes to projects after being submitted to Congress for approval will lead to a number of unfavorable outcomes such as: reducing needed functional space to accommodate required refinements, not adopting lessons learned that would improve mission accomplishment or reduce energy consumption, or even delaying the project for one or more years until a new authorization can be obtained for the increased scope. For DoD to effectively respond to rapidly changing missions, and to demands for the installation enterprise to become more agile and efficient, it is critical that military construction project authorizations have some limited scope flexibility with Congressional notification. Other federal agencies with large construction programs have such flexibility, which provides added reason for the Department's request.

Budget Implications: There are no budgetary impacts associated with implementing the proposed amendment. Allowing increases to the scope of individual authorized projects will not impact overall military construction budgets, as the total construction appropriation would be locked by the time these changes may occur. Moreover, allowing increases to the authorized scope of a project does not necessarily result in a need to increase the project appropriation. This proposal will allow projects to accommodate the most current criteria and technology at the time of construction, within existing project budgets. Also, this scope increase authority will likely be used only rarely. The Department will continue to develop project budget estimates based upon the most current criteria available at the time of budget preparation. The resources reflected in the table below are funded within the FY 2017 President's Budget.

RESOURCE REQUIREMENTS ($MILLIONS)							
Account	Budget Activity	Description	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
0500D	01	Major Construction, Defense-Wide	2,476.2	2,542.1	2,418.1	2,294.3	2,298.1
1205N	01	Major Construction, Navy	1,027.8	1,264.6	1,424.5	467.3	843.1
1235N	01	Major Construction, Navy Reserve	38.6	56.2	61.4	24.1	24.6
2050A	01	Major Construction, Army	663.1	638.9	571.7	573.3	541.6
2085A	01	Major Construction, Army National Guard	291.6	159.3	186.5	180.43	228.1
2086A	01	Major Construction, Army Reserve	57.9	65.0	52.0	56.5	70.0
3300F	01	Major Construction, Air Force	161.3	890.3	953.0	796.1	812.0
3730F	01	Major Construction, Air Force Reserve	41.3	32.0	60.1	15.2	15.5

3830F	01	Major Construction, Air National Guard	85.6	55.7	68.1	53.1	54.2

Changes to Existing Law: This proposal would make the following changes to section 2853 of title 10, United States Code:

§ 2853. Authorized cost and scope of work variations

(a) Except as provided in subsection (c), (d), or ~~(d)~~ (e), the cost authorized for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be increased or decreased by not more than 25 percent of the amount appropriated for such project or 200 percent of the minor construction project ceiling specified in section 2805(a) of this title, whichever is less, if the Secretary concerned determines that such revised cost is required for the sole purpose of meeting unusual variations in cost and that such variations in cost could not have reasonably been anticipated at the time the project was authorized by Congress.

(b)(1) Except as provided in subsection (c), the scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be reduced by not more than 25 percent from the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition. Any reduction in scope of work for a military construction project shall not result in a facility or item of infrastructure that is not complete and useable or does not fully meet the mission requirement contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(2) Except as provided in subsection (d), the ~~The~~ scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may not be increased above the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(3) In this subsection, the term "scope of work" refers to the function, size, or quantity of a facility or item of complete and useable infrastructure contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(c) The limitation on cost variations in subsection (a) or the limitation on scope reduction in subsection (b)(1) does not apply if the variation in cost or reduction in the scope of work is approved by the Secretary concerned and—

(1) in the case of a cost increase or a reduction in the scope of work—

(A) the Secretary concerned notifies the appropriate committees of Congress in writing of the cost increase or reduction in scope, the reasons therefor, a certification that the mission requirement identified in the justification data provided to Congress can ~~be~~ still be met with the reduced scope, and a description of the funds proposed to be used to finance any increased costs; and

(B) a period of 21 days has elapsed after the date on which the notification is received by the committees or, if over sooner, a period of 14 days has elapsed after the

date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title; or

(2) in the case of a cost decrease, the Secretary concerned notifies the appropriate committees of Congress in writing not later than 14 days after the date funds are obligated in connection with the military construction project or military family housing project.

(d) The limitation in subsection (b)(2) on an increase in the scope of work does not apply if—

(1) the increase in the scope of work is not more than 10 percent of the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition;

(2) the increase is approved by the Secretary concerned;

(3) the Secretary concerned notifies the appropriate committees of Congress in writing of the increase in scope and the reasons therefor; and

(4) a period of 21 days has elapsed after the date on which the notification is received by the committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(~~d~~e) The limitation on cost variations in subsection (a) does not apply to the following:

(1) The settlement of a contractor claim under a contract.

(2) The costs associated with the required remediation of an environmental hazard in connection with a military construction project or military family housing project, such as asbestos removal, radon abatement, lead-based paint removal or abatement, or any other legally required environmental hazard remediation, if the required remediation could not have reasonably been anticipated at the time the project was approved originally by Congress.

(~~e~~f) Notwithstanding the authority under subsections (a) through (d), the Secretary concerned shall ensure compliance of contracts for military construction projects and for the construction, improvement, and acquisition of military family housing projects with section 1341 of title 31 (commonly referred to as the "Anti-Deficiency Act").

Section 2802, Unspecified minor construction (UMC) is military construction below a prescribed dollar cost threshold per project that the Department of Defense (DoD) may undertake without specific project authorization from Congress. This proposal would allow the Department to normalize the utility of UMC authority across the Department worldwide by accommodating location-based differences in construction cost, using area construction cost indices for specified (major) military construction projects.

Construction costs can vary widely by location due to variations in cost for labor, materials, equipment, and design requirements for factors such as climate and seismic activity. To account for this, the Department annually develops and publishes area construction cost indices (called area cost factors, or ACFs) for the purpose of adjusting national-average historical facility costs to a specific project location. This allows increased accuracy in estimating the cost of military construction projects during the planning and budgeting process when detailed design

information is not available.

ACFs are developed through a process of collecting and comparing cost data on construction labor rates, materials, and equipment from various locations, as well as comparing other factors that impact construction costs such as climate, level of seismic activity, and labor availability. A given ACF represents the relative cost of construction at a specific location compared to the national average. The DoD-published ACF values for Fiscal Year 2015 range from a low of 0.72 at Longhorn Army Ammunition Plant, Texas, to a high of 4.37 at Eareckson Air Force Base, Alaska, with a value of 1.0 representing the average value for ninety-six base cities in CONUS. The following table provides the average FY 2015 ACF values for the United States, and selected foreign countries.

State/country	ACF
Alabama	0.84
Alaska	2.12
Arizona	0.97
Arkansas	0.84
California	1.24
Colorado	1.03
Connecticut	1.15
Delaware	1.06
Florida	0.86
Georgia	0.82
Hawaii	2.32
Idaho	1.03
Illinois	1.04
Indiana	0.99
Iowa	1.00
Kansas	0.92
Kentucky	0.90
Louisiana	0.87
Maine	1.03
Maryland	0.97
Massachusetts	1.17
Michigan	1.06
Minnesota	1.15
Mississippi	0.83
Missouri	1.00
Montana	1.06
Nebraska	1.00
Nevada	1.18
New Hampshire	1.04
New Jersey	1.21
New Mexico	0.91
New York	1.13
North Carolina	0.83
North Dakota	1.07
Ohio	0.94
Oklahoma	0.95
Oregon	1.13
Pennsylvania	1.14
Rhode Island	1.17
South Carolina	0.89
South Dakota	0.93
Tennessee	0.85
Texas	0.84
Utah	1.04
Vermont	1.02
Virginia	0.90
Washington	1.07
West Virginia	0.97
Wisconsin	1.09
Wyoming	0.99
Washington DC	1.03
Afghanistan	1.66
Albania	1.07
Algeria	1.27
American Samoa	2.03
Australia	1.49
Azerbaijan	1.27
Azores	1.70
Bahamas	1.43
Bahrain	1.42
Belgium	1.52
Bosnia	1.12
Bulgaria	0.94
Cambodia	1.18
China	1.21
Columbia	1.16
Crete	1.30
Croatia	1.03
Diego Garcia	2.67
Egypt	1.24
Estonia	1.33
France	1.26
Georgia Republic	1.06
Germany	1.17
Greece	1.23
Guam	2.31
Horn of Africa	1.80
Hungary	1.10
India	1.08
Indonesia	0.98
Iraq	1.61
Ireland	1.23
Israel	1.26
Italy	1.44
Japan	1.77
Jordan	1.55
Korea	1.09
Kosovo	1.16
Kuwait	1.18
Kwajalein	2.61
Latvia	1.25
Lebanon	1.38
Lithuania	1.26
Netherlands	1.43
New Zealand	1.32
Northern Mariana	2.42
Norway	2.12
Oman	1.19
Panama	1.11
Philippines	1.19
Poland	0.95
Puerto Rico	1.13
Qatar	1.20
Romania	1.05
Saudi Arabia	1.20

State/country	ACF
Singapore	1.15
Spain	1.16
Thailand	0.94
Turkey	0.98
Ukraine	0.95
United Arab Emirates	1.16
United Kingdom	1.11

The following chart depicts the distribution of DoD facilities inventory in the United States by ACF value, with an overall weighted mean of 1.08 and weighted median of 1.00.

Raw PRV represents plant replacement value normalized for location, i.e., where the ACF is backed-out of the calculation so that the value represents only the facility size and facility type. This graph depicts the distribution of DoD facilities by ACF. The bulk of the DoD facilities inventory is located in areas with ACF values less than 1.0.

Although the Department applies ACFs to cost estimates (and subsequent authorization requests) for specified (major) construction projects, there is no equivalent provision for minor construction authority. The UMC cost limitations prescribed by 10 U.S.C. section 2805 do not account for local variations in construction costs, and therefore impose differential constraints on the utility and effectiveness of the minor construction program across the Department worldwide. Using the example locations above, the $3 million limitation on minor projects would provide almost six times the effective buying power at Longhorn Army Ammunition Plant than at Eareckson Air Force Base, where the high cost of construction renders the use of minor construction impractical.

Application of the ACF to the UMC program would normalize the usefulness of UMC projects around the world, and enable the Department to more equitably and broadly realize the intended benefits of UMC authority. This approach is wholly consistent with the longstanding flexibility Congress granted to the military family housing program in 10 U.S.C. section 2825, Improvements to Family Housing Units. Section 2825 essentially serves as the UMC authority for the military family housing program, and establishes funding authority that varies based on the "area construction cost index as developed by the Department of Defense for the location concerned". This proposal extends that concept to the mainstream UMC program.

Budget Implications: There are no general budgetary impacts expected with the proposed amendment. Many large military installations have ACFs at or below a value of 1.00 that will mitigate any increased use of UMC authority in higher-cost locations. The resources reflected in

the table below are funded within the FY 2017 President's Budget.

RESOURCE REQUIREMENTS ($M)							
Account	Budget Activity	Description	FY17	FY18	FY19	FY20	FY21
0500D	02	Unspecified Minor Construction, Defense-Wide	42.8	44.7	43.1	46.1	50.9
Navy does not intend to use the authority, which would have been funded from the following account: Military Construction, Navy.							
Navy does not intend to use the authority, which would have been funded from the following account: Military Construction, Navy Reserve.							
2050A	02	Unspecified Minor Construction, Army	25.0	25.0	25.0	25.0	25.0
2085A	02	Unspecified Minor Construction, Army National Guard	12.0	12.0	15.0	15.0	15.0
2086A	02	Unspecified Minor Construction, Army Reserve	2.8	3.3	8.3	.4	2.7
3300F	02	Unspecified Minor Construction, Air Force	20.3	22.0	23.0	20.0	20.4
3730F	02	Unspecified Minor Construction, Air Force Reserve	2.3	3.0	1.0	6.0	6.1
3830F	02	Unspecified Minor Construction, Air National Guard	14.4	11.2	12.0	13.0	13.3

Changes to Existing Law: This proposal would make the following change to section 2805 of title 10, United States Code:

§ 2805. Unspecified minor construction

(a) AUTHORITY TO CARRY OUT UNSPECIFIED MINOR MILITARY CONSTRUCTION PROJECTS.—(1) Within an amount equal to 125 percent of the amount authorized by law for such purpose, the Secretary concerned may carry out unspecified minor military construction projects not otherwise authorized by law.

(2) An unspecified minor military construction project is a military construction project that has an approved cost equal to or less than $ 3,000,000. However, if the military construction project is intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening, an unspecified minor military construction project may have an approved cost equal to or less than $ 4,000,000.

(b) APPROVAL AND CONGRESSIONAL NOTIFICATION.—(1) An unspecified minor military construction project costing more than $ 1,000,000 may not be carried out under this section unless approved in advance by the Secretary concerned. This paragraph shall apply even though the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.

(2) When a decision is made to carry out an unspecified minor military construction project to which paragraph (1) is applicable, the Secretary concerned shall notify in writing the appropriate committees of Congress of that decision, of the justification for the project, and of the estimated cost of the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by the committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(c) USE OF OPERATION AND MAINTENANCE FUNDS.—The Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified minor military construction project costing not more than $ 1,000,000.

(d) LABORATORY REVITALIZATION.—(1) For the revitalization and recapitalization of laboratories owned by the United States and under the jurisdiction of the Secretary concerned, the Secretary concerned may obligate and expend—

(A) from appropriations available to the Secretary concerned for operation and maintenance, amounts necessary to carry out an unspecified minor military construction project costing not more than $4,000,000, notwithstanding subsection (c); or

(B) from appropriations available to the Secretary concerned for military construction not otherwise authorized by law or from funds authorized to be made available under section 219(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 10 U.S.C. 2358 note), amounts necessary to carry out an unspecified minor military construction project costing not more than $4,000,000.

(2) For purposes of this subsection, an unspecified minor military construction project is a military construction project that (notwithstanding subsection (a)) has an approved cost equal to or less than $4,000,000. The Secretary of Defense shall establish procedures for the review and approval of requests from the Secretary of a military department to carry out a construction project under this subsection.

(3) Not later than February 1, 2014, the Secretary of Defense shall submit to the congressional defense committees a report on the use of the authority provided by this subsection. The report shall include a list and description of the construction projects carried out under this subsection, including the location and cost of each project.

(4) In this subsection, the term "laboratory" includes—

(A) a research, engineering, and development center; and

(B) a test and evaluation activity.

(5) The authority to carry out a project under this subsection expires on September 30, 2018.

(e) PROHIBITION ON USE FOR NEW HOUSING UNITS.—Military family housing projects for construction of new housing units may not be carried out under the authority of this section.

(f) ADJUSTMENT OF DOLLAR LIMITATIONS FOR LOCATION.—Each fiscal year, the Secretary concerned shall adjust the dollar limitations specified in this section applicable to an unspecified minor military construction project to reflect the area construction cost

<u>index for military construction projects published by the Department of Defense during the prior fiscal year for the location of the project.</u>

Section 2803 would authorize the Department of Defense (DoD) to proceed with planning, design and construction for public infrastructure projects identified as necessary mitigation for several significant impacts identified in the Navy's 2015 "Guam and Commonwealth of the Northern Mariana Islands Military Relocation (2012 Roadmap Adjustments) Supplemental Environmental Impact Statement (SEIS)". The civilian water and wastewater improvements were authorized in the FY16 NDAA and that is repeated/continued here. Construction of the cultural repository would ensure that a federally-compliant facility will be in place to support this construction activity. Construction of a public health lab will provide the capability to identify public health threats to the military and civilian population.

Pursuant to the provisions of the National Environmental Policy Act (NEPA) and its implementing regulations, DoD has an obligation to state whether all practicable means to avoid or mitigate the environmental consequences of the selected alternative were adopted, and if not, explain why they were not. The NEPA analysis for the relocation relies on the understanding that the wastewater improvements will be implemented prior to additional demand on the NDWWTP. Upgrades to the NDWWTP are an integral part of the natural resources mitigation for the proposed relocation, specifically impacts to three endangered coral species, sea turtles, and essential fish habitat.

The Economic Adjustment Committee Implementation Plan identifies critical mitigation projects requiring federal assistance to respond to needs in specific resource areas identified by the Department of Navy (Navy) as areas of "significant" impact in the 2015 SEIS. DoD is the primary source for funding because of its role as the agency undertaking the program activity that will impact the Territory, Guam does not have the fiscal ability to fund the necessary improvements within the timeframe required for Marine Corps relocation initial operating capability.

Based on the project complexities, detailed planning and design, environmental assessments required prior to being able to break ground, and execution in coordination with the Government of Guam; the planned timeline for the relocation of Marine Corps forces requires the authorization for the public infrastructure projects in FY17 to synchronize and enable fully funded grant awards (obligation of funds) for construction and completion of these projects. But for federal financial assistance, and noting the Territory is incapable of sourcing and applying sufficient resources for these investments, these public infrastructure projects won't be completed.

Budget Implications:

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**

	86.7	0.0	0.0	0.0	0.0	Operation and Maintenance, Defense-Wide	04	4GTM	

Section 2804 would transfer administrative jurisdiction over the Fort Belvoir Mark Center Campus (Mark Center Campus) from the Secretary of the Army to the Secretary of Defense by making the Mark Center Campus part of the Pentagon Reservation. Constructed under the 2005 Base Realignment and Closure (BRAC) Recommendation #133, the Mark Center Campus is a satellite facility 12 miles north of Fort Belvoir that provides office facilities for approximately 6,400 Office of the Secretary of Defense (OSD), Washington Headquarters Services (WHS), and defense agency personnel. While the Fort Belvoir Army Garrison currently maintains administrative jurisdiction of the Mark Center Campus as part of Fort Belvoir, WHS and Pentagon Force Protection Agency (PFPA) provide operational support and security services for the Mark Center Campus under an exclusive use permit with Fort Belvoir. WHS and PFPA provide support as part of their respective missions to provide facilities maintenance and management for the Pentagon Reservation and leased facilities in the National Capital Region (NCR), all under the authority and control of the Director of Administration (DA) and the Secretary of Defense's Deputy Chief Management Officer.

The transfer of administrative jurisdiction from the Secretary of the Army to the Secretary of Defense would directly align facility ownership with the organizations that provide full management support for the Mark Center Campus. WHS and PFPA already provide management oversight for non-military installation facilities in the NCR, including financial, operational, and governance management. The realignment of administrative jurisdiction from Army to Department of Defense aligns facility ownership with management responsibilities, is consistent with the WHS and PFPA missions, and allows for improved management of office space inventory and building management as part of the WHS charter and security management consistent with the PFPA charter. Furthermore, the realignment provides the OSD and defense agency tenants of the Mark Center Campus a direct connection to their facility management support structure and allows for further development of the Mark Center Campus as a viable Continuity of Operation (COOP) location.

Consistent with the proposed transfer of administrative jurisdiction, the proposal would amend subsection (f) and repeal subsection (g) of section 2674 to clarify that the term "Pentagon Reservation" includes the Fort Belvoir Mark Center Campus and the Raven Rock Mountain complex.

In addition, the proposal would further amend the definition of "Pentagon Reservation" to reflect the recent transfer of a portion of the Pentagon Reservation known as the Navy Annex to the Secretary of the Army. Section 2881 of the Fiscal Year 2000 National Defense Authorization Act required the Secretary of Defense to transfer to the Secretary of the Army administrative jurisdiction over the Navy Annex, which contained Federal Office Building Number 2 (FOB2), parking areas, and other improvements. Section 2881 also required removal of all improvements on the Navy Annex property in order to prepare the property for use as a part of Arlington National Cemetery. The Department transferred administrative jurisdiction of the Navy Annex property to the Army effective January 1, 2012, and FOB2 has been

demolished. As a result, it is necessary to amend section 2674 by (a) updating the approximate acreage of the Pentagon Reservation, and (b) deleting the reference to FOB2.

This proposal also repeals the obsolete reporting requirement in section 2674(a)(2) relating to the Pentagon Renovation. The renovation of the Pentagon is now complete, and the Department submitted its final report to Congress earlier this year. Consequently, there is no longer a need for the Department to submit annual reports about the state of the renovation and plans for such activities in subsequent fiscal years.

In addition, the proposal makes a minor change reflecting that jurisdiction, custody, and control of the Pentagon Reservation are vested in the Secretary of Defense. The transfer referenced in the existing language occurred shortly after the original enactment of section 2674 in the National Defense Authorization Act for Fiscal Year 1991.

Budget Implications: The proposal will not require additional resources, but it will require the transfer of resources between appropriations within the Secretary of Defense budget. The funding required for the operation of the Mark Center Campus, currently allocated to the Building Maintenance Fund (BMF) and shown in the table below, will be transferred to the Pentagon Renovation Maintenance Revolving Fund (PRMRF).

RESOURCE REQUIREMENTS ($MILLIONS)					
FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation**
($71.0)	($72.6)	($73.8)	($75.4)	($76.8)	Building Maintenance Fund (97X4931)
$71.0	$72.6	$73.8	$75.4	$76.8	Pentagon Reservation Maintenance Fund (97X4950)

Changes to Existing Law: This proposal would make the following changes to section 2674 of title 10, United States Code:

§ 2674. Operation and control of Pentagon Reservation and defense facilities in National Capital Region

(a) PENTAGON RESERVATION.—~~(1)~~ The Secretary of Defense has ~~Jurisdiction~~ jurisdiction, custody, and control over, and responsibility for, the operation, maintenance, and management of the Pentagon Reservation ~~is transferred to the Secretary of Defense~~.

~~(2) Before March 1 of each year, the Secretary of Defense shall transmit to the congressional committees specified in paragraph (3) a report on the state of the renovation of the Pentagon Reservation and a plan for the renovation work to be conducted in the fiscal year beginning in the year in which the report is transmitted.~~

~~(3) The committees referred to in paragraph (2) are—~~

~~(A) the Committee on Armed Services and the Committee on Environment and Public Works of the Senate; and~~

~~(B) the Committee on Armed Services and the Committee on Transportation and Infrastructure of the House of Representatives.~~

(b) LAW ENFORCEMENT AUTHORITIES AND PERSONNEL.—(1) The Secretary may appoint military or civilian personnel or contract personnel to perform law enforcement and security functions for the Pentagon Reservation and for property occupied by, or under the jurisdiction, custody, and control of the Department of Defense, and located in the National Capital Region. Such individuals—

(A) may be armed with appropriate firearms required for personal safety and for the proper execution of their duties, whether on Department of Defense property or in travel status; and

(B) shall have the same powers (other than the service of civil process) as sheriffs and constables upon the property referred to in the first sentence to enforce the laws enacted for the protection of persons and property, to prevent breaches of the peace and suppress affrays or unlawful assemblies, and to enforce any rules or regulations with respect to such property prescribed by duly authorized officials.

(2) For positions for which the permanent duty station is the Pentagon Reservation, the Secretary, in his sole and exclusive discretion, may without regard to the pay provisions of title 5, fix the rates of basic pay for such positions occupied by civilian law enforcement and security personnel appointed under the authority of this section so as to place such personnel on a comparable basis with personnel of other similar Federal law enforcement and security organizations within the vicinity of the Pentagon Reservation, not to exceed the basic pay for personnel performing similar duties in the United States Secret Service Uniformed Division or the United States Park Police.

(c) REGULATIONS AND ENFORCEMENT.—(1) The Secretary may prescribe such rules and regulations as the Secretary considers appropriate to ensure the safe, efficient, and secure operation of the Pentagon Reservation, including rules and regulations necessary to govern the operation and parking of motor vehicles on the Pentagon Reservation.

(2) Any person who violates a rule or regulation prescribed under this subsection is liable to the United States for a civil penalty of not more than $1,000.

(3) Any person who willfully violates any rule or regulation prescribed pursuant to this subsection commits a Class B misdemeanor.

(d) AUTHORITY TO CHARGE FOR PROVISION OF SERVICES, FACILITIES, ETC.—The Secretary of Defense may establish rates and collect charges for space, services, protection, maintenance, construction, repairs, alterations, or facilities provided at the Pentagon Reservation.

(e) PENTAGON RESERVATION MAINTENANCE REVOLVING FUND.—(1) There is established in the Treasury of the United States a revolving fund to be known as the Pentagon Reservation Maintenance Revolving Fund (hereafter in this section referred to as the "Fund"). There shall be deposited into the Fund funds collected by the Secretary for space and services and other items provided an organization or entity using any facility or land on the Pentagon Reservation pursuant to subsection (d).

* * * * * * *

(f) DEFINITIONS.—In this section:

(1) The term ‘‘Pentagon Reservation’’ means ~~that area of land (consisting of approximately 280~~ 228 ~~acres) and improvements thereon, located in Arlington, Virginia,~~

~~on which the Pentagon Office Building, Federal Building Number 2, the Pentagon heating and sewage treatment plants, and other related facilities are located, including various areas designated for the parking of vehicles~~ the Pentagon, the Mark Center Campus, and the Raven Rock Mountain Complex.

(2) The term "National Capital Region'' means the geographic area located within the boundaries of (A) the District of Columbia, (B) Montgomery and Prince Georges Counties in the State of Maryland, (C) Arlington, Fairfax, Loudoun, and Prince William Counties and the City of Alexandria in the Commonwealth of Virginia, and (D) all cities and other units of government within the geographic areas of such District, Counties, and City.

(3) The term "Pentagon" means that area of land (consisting of approximately 227 acres) and improvements thereon, including parking areas, located in Arlington County, Virginia, containing the Pentagon Office Building and its supporting facilities,.

(4) The term "Mark Center Campus" means that area of land (consisting of approximately 16 acres) and improvements thereon, including parking areas, located in Alexandria, Virginia, and known on the day before the date of the enactment of this paragraph as the Fort Belvoir Mark Center Campus.

(5) The term "Raven Rock Mountain Complex" means that area of land (consisting of approximately 720 acres) and improvements thereon, including parking areas, at the Raven Rock Mountain Complex and its supporting facilities located in Maryland and Pennsylvania.

~~(g) For purposes of subsections (b), (c), (d), and (e), the terms "Pentagon Reservation" and "National Capital Region" shall be treated as including the land and physical facilities at the Raven Rock Mountain Complex.~~

Section 2805 would amend section 2805(d) of title 10, United States Code, by eliminating the "sunset" provision and making permanent the authority to use up to $4 million dollars revitalization and recapitalization of laboratories under jurisdiction of the Secretary concerned. Without this proposal, current authority will expire on September 30, 2018.

The speed of advances in science and technology outpace the planning cycle and programming processes for major military construction (MILCON) projects. The current authority in subsection (d) provides Secretaries of the military departments' greater flexibility in the allocation of resources for laboratory infrastructure construction necessary to find solutions to our Warfighters' rapidly evolving needs and helps ensure costs are borne, at least in part, by the benefiting organizations.

The authority has proven to be a powerful and useful tool for laboratory directors and by the test and evaluation community. As a result, Congress has extended the authority each time it has been close to expiring. However, construction projects require some advance planning and programming in order to be executed efficiently. Making the authority permanent would allow the military departments to plan with confidence and program across the entire Program Objective Memorandum cycle. This long-term view would allow for more strategic and effective use of the authority.

Budget Implications: There is no budget impact for total long-term costs. The requirement to maintain laboratory facilities is based on separate factors that are not impacted by this proposal. This proposal would make existing authority for unspecified minor military construction for laboratory facilities permanent. Failure to extend this authority would result (1) shift costs from the Operations and Maintenance, Unspecified Minor Military Construction, and Research, Development, Testing, and Evaluation (RDT&E) accounts to Military Construction accounts (MCA) and (2) make RDT&E projects completely reliant on extended major MCA timelines for minor projects, which would delay schedules and subject projects to cost escalations.

PERSONNEL AFFECTED									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash 1 Line Item**	**Program Element**
Army	0	0	0	0	0				
Navy	0	0	0	0	0				
Air Force	0	0	0	0	0				
Total	0	0	0	0	0				

RESOURCE REQUIREMENTS ($MILLIONS)

	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash 1 Line Item**	**Program Element**
Army	0	0	0	0	0				
Navy	0	0	0	0	0				
Air Force	0	0	0	0	0				
Total	0	0	0	0	0				

Changes to Existing Law: This proposal would make the following changes to section 2805 of title 10, United States Code:

§2805. Unspecified minor construction

(a) AUTHORITY TO CARRY OUT UNSPECIFIED MINOR MILITARY CONSTRUCTION PROJECTS.—(1) Within an amount equal to 125 percent of the amount authorized by law for such purpose, the Secretary concerned may carry out unspecified minor military construction projects not otherwise authorized by law.

(2) An unspecified minor military construction project is a military construction project that has an approved cost equal to or less than $3,000,000. However, if the military construction project is intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening, an unspecified minor military construction project may have an approved cost equal to or less than $4,000,000.

(b) APPROVAL AND CONGRESSIONAL NOTIFICATION.—(1) An unspecified minor military construction project costing more than $1,000,000 may not be carried out under this section unless approved in advance by the Secretary concerned. This paragraph shall apply even though the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.

(2) When a decision is made to carry out an unspecified minor military construction project to which paragraph (1) is applicable, the Secretary concerned shall notify in writing the appropriate committees of Congress of that decision, of the justification for the project, and of the estimated cost of the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by the committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(c) USE OF OPERATION AND MAINTENANCE FUNDS—-The Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified minor military construction project costing not more than $1,000,000.

(d) LABORATORY REVITALIZATION.—(1) For the revitalization and recapitalization of laboratories owned by the United States and under the jurisdiction of the Secretary concerned, the Secretary concerned may obligate and expend-

(A) from appropriations available to the Secretary concerned for operation and maintenance, amounts necessary to carry out an unspecified minor military construction project costing not more than $4,000,000, notwithstanding subsection (c); or

(B) from appropriations available to the Secretary concerned for military construction not otherwise authorized by law or from funds authorized to be made available under section 219(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 10 U.S.C. 2358 note), amounts necessary to carry out an unspecified minor military construction project costing not more than $4,000,000.

(2) For purposes of this subsection, an unspecified minor military construction project is a military construction project that (notwithstanding subsection (a)) has an approved cost equal to or less than $4,000,000. The Secretary of Defense shall establish procedures for the review and approval of requests from the Secretary of a military department to carry out a construction project under this subsection.

(3) Not later than February 1, 2014, the Secretary of Defense shall submit to the congressional defense committees a report on the use of the authority provided by this subsection. The report shall include a list and description of the construction projects carried out under this subsection, including the location and cost of each project.

(4) In this subsection, the term "laboratory" includes—

(A) a research, engineering, and development center; and

(B) a test and evaluation activity.

~~(5) The authority to carry out a project under this subsection expires on September 30, 2018.~~

(e) PROHIBITION ON USE FOR NEW HOUSING UNITS.—Military family housing projects for construction of new housing units may not be carried out under the authority of this section.

Section 2806 would change, by a few months, the statutory termination dates for various military land withdrawals so that they each would have an expiration date on a March 31st. This would be consistent with the practice applied for the withdrawals in the National Defense Authorization Act for Fiscal Year 2014. Due to the uncertainty of when a national defense authorization act will be enacted each year, this extension of a few months would also allow an extra legislative year for the Department of Defense (DoD) to submit legislative renewal proposals.

Subsection (a) provides that the El Centro withdrawal would expire on March 31, 2022, instead of September 22, 2021, a difference of approximately six months.

Subsection (b) provides that the Juniper Butte Range withdrawal would expire on March 31, 2024, instead of October 16, 2023, a difference of approximately five months.

Subsection (c) provides that the Goldwater Range withdrawal would expire on March 31, 2025, instead of October 4, 2024, a difference of approximately six months.

Subsection (d) provides that the Fort Irwin withdrawal would expire on March 31, 2027, instead of December 27, 2026, a difference of approximately three months.

Subsection (e) provides that the Fallon Ranges and Nellis Range withdrawals would expire on March 31, 2022, instead of November 5, 2021, and the Fort Greeley and Fort Wainwright Ranges and McGregor Range withdrawals would expire on March 31, 2027, instead of November 5, 2026, differences of approximately five months.

This proposal is administrative. It would not make substantial changes to the various withdrawal periods. It merely allows greater time to the DoD and the Department of the Interior to submit any required legislative renewal proposals.

Budget Implications: This proposal has no discernable budget implications since the actions required of the DoD will be the same.

Changes to Existing Law: This proposal would make changes to existing law as follows:

National Defense Authorization Act for Fiscal Year 1997

SEC. 2925. DURATION OF WITHDRAWAL AND RESERVATION.

The withdrawal and reservation made under this subtitle shall terminate ~~25 years after the date of the enactment of this subtitle~~ on March 31, 2022.

Strom Thurmond National Defense Authorization Act for Fiscal Year 1999

SEC. 2915. DURATION OF WITHDRAWAL.

(a) TERMINATION—(1) Except as otherwise provided in this section and section 2916, the withdrawal and reservation made by this title shall terminate ~~25 years after the date of the enactment of this Act~~on March 31, 2024.

(b) ***

National Defense Authorization Act for Fiscal Year 2000

SEC. 3015. DURATION OF WITHDRAWAL AND RESERVATION.

(a) GENERAL TERMINATION DATE.—The withdrawal and reservation of lands by section 3011 shall terminate ~~25 years after November 6, 2001~~on March 31, 2027, except as otherwise provided in this subtitle and except for the withdrawals provided for under subsections (a) and (b) of section 3011 which shall terminate ~~20 years after November 6, 2001~~on March 31, 2022.

(b) ***

******

SEC. 3031. BARRY M. GOLDWATER RANGE, ARIZONA.

(a) ***

******

(d) DURATION OF WITHDRAWAL AND RESERVATIONS.—(1) IN GENERAL.—Unless extended pursuant to subsection (e), the withdrawal and reservation of lands by this section shall terminate ~~25 years after the date of the enactment of this Act~~on March 31, 2025, except as otherwise provided in subsection (f)(4).

National Defense Authorization Act for Fiscal Year 2002

SEC. 2910. DURATION OF WITHDRAWAL AND RESERVATION.

(a) TERMINATION DATE.—Unless extended pursuant to section 2911, unless relinquishment is postponed by the Secretary of the Interior pursuant to section 2912(b), and except as provided in section 2912(d), the withdrawal and reservation made by this title shall terminate ~~25 years after the date of the enactment of this Act~~on March 31, 2027.

(b) ***

Section 2807, in support of facilitating the continued provision of in-kind construction contributions to U.S. forces by a host country as required under a bilateral agreement, the Department of Defense is recommending repeal of Section 2803 of the Carl Levin and Howard 'Buck' McKeon National Defense Authorization Act (NDAA) for Fiscal Year 2015 (Public Law 113-291) and amending an in-kind construction congressional notification requirement into section 2687a of title 10, United States Code. The Department recommends elimination of the requirement to obtain Congressional authorization for the acceptance of host country provided in-kind military construction projects as currently specified in section 2803 of the Fiscal Year 2015 NDAA because effectuation of this requirement jeopardizes the willingness and ability of host countries to provide the Department in-kind military construction support. This risk emanates, in part, from the disconnect that typically exists between the congressional authorization process and the planning, programming, and budgeting systems and processes of countries that host U.S. forces. Host countries will react negatively to – and realistically would not – modify their budgeting systems and processes to accommodate U.S. authorization timelines so that host nation cost sharing contributions can be spent. These countries might also

reject the mere notion of having the U.S. Congress authorize their contributions toward the costs of stationing U.S. forces on their territory. Should the Congress fail to provide the necessary construction project authorizations within the appropriate timeframes or at a sufficient level of work, this will cause great difficulty for a host country to fulfill its cost sharing obligations to the U.S. and might ultimately lead to lost support. In turn, this could reduce or terminate the willingness or ability of countries to provide the U.S. with construction cost sharing support in the future after the authorization requirement is effectuated.

The Department proposes that the requirement for in-kind construction contributions currently established in section 2803 of the Fiscal Year 2015 NDAA be replaced by a notification provision amended into section 2687a of title 10, as specified in the legislative language appearing above. This notification provision will give the Congress visibility and oversight of the in-kind construction contributions accepted by the Department from countries hosting U.S. forces while at the same time not creating operational and political frictions with those countries.

Budget Implications: None.

Changes to Existing Law: This proposal would repeal section 2803 of the Carl Levin and Howard 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015 (P.L. 113-291) and would amend sections 2802 and 2687a of title 10 United States Code, as reflected below.

~~**SEC. 2803. CLARIFICATION OF AUTHORIZED USE OF PAYMENTS-IN-KIND AND IN-KIND CONTRIBUTIONS.**~~

~~(a) PAYMENTS-IN-KIND AND IN-KIND CONTRIBUTIONS.—Subsection (f) of section 2687a of title 10, United States Code, is amended to read as follows:~~

~~''(f) AUTHORIZED USE OF PAYMENTS-IN-KIND AND IN-KIND CONTRIBUTIONS.—(1) A military construction project, as defined in chapter 159 of this title, may be accepted as payment-in-kind or as an in-kind contribution required by a bilateral agreement with a host country only if that military construction project is authorized by law.~~

~~''(2) Operations of United States forces may be funded through payment-in-kind or an in-kind contribution required by a bilateral agreement with a host country under this section only if the costs covered by such payment or contribution are included in the budget justification documents for the Department of Defense submitted to Congress in connection with the budget submitted under 1105 of title 31.~~

~~''(3) If funds previously appropriated for a military construction project or operating costs are subsequently addressed in an agreement for payment-in-kind or by an in-kind contribution required by a bilateral agreement with a host country, the Secretary of Defense shall return to the Treasury funds in the amount equal to the value of the appropriated funds.~~

~~''(4) This subsection does not apply to a military construction project that—~~

~~''(A) was specified in a bilateral agreement with a host country that was entered into before December 26, 2013;~~

~~''(B) was the subject of negotiation between the United States and a host country as of the date of the enactment of the Military Construction Authorization Act for Fiscal Year 2015;~~

~~‘‘(C) was accepted as payment-in-kind for the residual value of improvements made by the United States at military installations released to the host country under section 2921 of the Military Construction Authorization Act for Fiscal Year 1991 (division B of Public Law 101–510; 10 U.S.C. 2687 note) before December 26, 2013; or~~

~~‘‘(D) subject to paragraph (6), will cost less than the cost specified in subsection (a)(2) of section 2805 of this title for certain unspecified minor military construction projects.~~

~~‘‘(5) This subsection does not apply to an in-kind contribution toward operating costs that—~~

~~‘‘(A) was specified in a bilateral agreement with a host country that was entered into before December 26, 2013;~~

~~‘‘(B) was the subject of negotiation between the United States and a host country as of the date of the enactment of the Military Construction Authorization Act for Fiscal Year 2015; or~~

~~‘‘(C) was accepted as an in-kind contribution for the residual value of improvements made by the United States at military installations released to the host country under section 2921 of the Military Construction Authorization Act for Fiscal Year 1991 (division B of Public Law 101–510; 10 U.S.C. 2687 note) before December 26, 2013.~~

~~‘‘(6) In the case of a military construction project excluded pursuant to paragraph (4)(D) whose cost will exceed the cost specified in subsection (b) of section 2805 of this title for certain unspecified minor military construction projects, the congressional notification requirements and waiting period specified in paragraph (2) of such subsection shall apply.’’.~~

~~(b) CONFORMING AMENDMENTS.—Section 2802(d) of title 10, United States Code, is amended—~~

~~(1) in paragraph (1), by striking ‘‘payment-in-kind contributions’’ and inserting ‘‘payments-in-kind or in-kind contributions’’;~~

~~(2) by striking paragraph (3) and inserting the following new paragraph:~~

~~‘‘(3) This subsection does not apply to a military construction project covered by one of the exceptions in section 2687a(f)(4) of this title.’’; and~~

~~(3) in paragraph (4), by striking ‘‘paragraph (3)(C)’’ and inserting ‘‘paragraph (3), by reference to section 2687a(f)(4)(D) of this title,’’.~~

~~(c) CONGRESSIONAL NOTIFICATION.—~~

~~(1) NOTIFICATION REQUIRED.—During the period beginning on the date of the enactment of this Act and ending on the effective date specified in subsection (d), the Secretary of Defense shall submit to the congressional defense committees a written notification, at least 30 days before the initiation date for any military construction project to be built for Department of Defense personnel outside the United States using payments-inkind or in-kind contributions.~~

~~(2) ELEMENTS OF NOTICE.—A written notifications under paragraph (1) shall include the following:~~

~~(A) The requirements for, and purpose and description of, the proposed military construction project.~~

~~(B) The cost of the proposed military construction project.~~

~~(C) The scope of the proposed military construction project.~~

~~(D) The schedule for the proposed military construction project.~~

~~(E) Such other details as the Secretary considers relevant.~~

~~(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the later of—~~

~~(1) September 30, 2016; or~~

~~(2) the date of the enactment of an Act authorizing funds for military construction for fiscal year 2017.~~

§ 2802. Military construction projects

(a) The Secretary of Defense and the Secretaries of the military departments may carry out such military construction projects, land acquisitions, and defense access road projects (as described under section 210 of title 23 as are authorized by law.

(b) Authority provided by law to carry out a military construction project includes authority for—

(1) surveys and site preparation;

(2) acquisition, conversion, rehabilitation, and installation of facilities;

(3) acquisition and installation of equipment and appurtenances integral to the project;

(4) acquisition and installation of supporting facilities (including utilities) and appurtenances incident to the project;

and

(5) planning, supervision, administration, and overhead incident to the project.

(c) In determining the scope of a proposed military construction project, the Secretary concerned shall submit to the President such recommendations as the Secretary considers to be appropriate regarding the incorporation and inclusion of life-cycle cost-effective practices as an element in the project documents submitted to Congress in connection with the budget submitted pursuant to section 1105 of title 31 for the fiscal year in which a contract is proposed to be awarded for the project.

(d) (1) The requirement under subsection (a) that a military construction project must be authorized by law includes military construction projects funded through payment-in-kind **~~contributions~~** pursuant to a bilateral agreement with a host country.

(2) The Secretary of Defense or the Secretary concerned shall include military construction projects covered under paragraph (1) in the budget justification documents for the Department of Defense submitted to Congress in connection with the budget for a fiscal year submitted under 1105 of title 31.

(3) This subsection does not apply to a military construction project that—

(A) was specified in a bilateral agreement with a host country that was entered into prior to the date of the enactment of the Military Construction Authorization Act for Fiscal Year 2014 [enacted Dec. 26, 2013];

(B) was accepted as payment-in-kind for the residual value of improvements made by the United States at military installations released to the host country under section 2921 of the Military Construction Authorization Act for Fiscal Year 1991 (division B of Public Law 101-510; 10 U.S.C. 2687 note) prior to the date of the enactment of the Military Construction Authorization Act for Fiscal Year 2014 [enacted Dec. 26, 2013]; or

(C) will cost less than the cost specified in subsection (a)(2) of section 2805 of this title for certain unspecified minor military construction projects.

(4) In the case of a military construction project excluded pursuant to paragraph (3)(C) whose cost will exceed the cost specified in subsection (b) of section 2805 of this title for certain unspecified minor military construction projects, the congressional notification requirements and waiting period specified in paragraph (2) of such subsection shall apply.

(e)(1) If a construction project, land acquisition, or defense access road project described in paragraph (2) will be carried out pursuant to a provision of law other than a Military Construction Authorization Act, the Secretary concerned shall—

(A) comply with the congressional notification requirement contained in the provision of law under which the construction project, land acquisition, or defense access road project will be carried out; or

(B) in the absence of such a congressional notification requirement, submit to the congressional defense committees, in an electronic medium pursuant to section 480 of this title, a report describing the construction project, land acquisition, or defense access road project at least 15 days before commencing the construction project, land acquisition, or defense access road project.

(2) Except as provided in paragraph (3), a construction project, land acquisition, or defense access road project subject to the notification requirement imposed by paragraph (1) is a construction project, land acquisition, or defense access road project that—

(A) is not specifically authorized in a Military Construction Authorization Act;

(B) will be carried out by a military department, Defense Agency, or Department of Defense Field Activity; and

(C) will be located on a military installation.

(3) This subsection does not apply to a construction project, land acquisition, or defense access road project described in paragraph (2) whose cost is less than or equal to the threshold amount specified in section 2805(b) of this title.

* * * * * *

§ 2687a. Overseas base closures and realignments and basing master plans

(a) ANNUAL REPORT ON STATUS OF OVERSEAS CLOSURES AND REALIGNMENTS AND MASTER PLANS.—(1) At the same time that the budget is submitted under section 1105(a) of title 31 for a fiscal year, the Secretary of Defense shall submit to the congressional defense committees and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a report on—

(A) the status of overseas base closure and realignment actions undertaken as part of a global defense posture realignment strategy; and

(B) the status of development and execution of comprehensive master plans for overseas military main operating bases, forward operating sites, and cooperative security locations.

(2) A report under paragraph (1) shall address the following:

(A) How the master plans described in paragraph (1)(B) would support the security commitments undertaken by the United States pursuant to any international security treaty.

(B) The impact of such plans on the current security environments in the combatant commands, including United States participation in theater security cooperation activities and bilateral partnership, exchanges, and training exercises.

(C) Any comments of the Secretary of Defense resulting from an interagency review of these plans that includes the Department of State and other Federal departments and agencies that the Secretary of Defense considers necessary for national security.

(b) DEPARTMENT OF DEFENSE OVERSEAS MILITARY FACILITY INVESTMENT RECOVERY ACCOUNT.—(1) Except as provided in subsection (c), amounts paid to the United States, pursuant to any treaty, status of forces agreement, or other international agreement to which the United States is a party, for the residual value of real property or improvements to real property used by civilian or military personnel of the Department of Defense shall be deposited into the Department of Defense Overseas Military Facility Investment Recovery Account.

(2) Money deposited in the Department of Defense Overseas Military Facility Investment Recovery Account shall be available to the Secretary of Defense for payment, as provided in appropriation Acts, of costs incurred by the Department of Defense in connection with—

(A) military construction, facility maintenance and repair, and environmental restoration at military installations in the United States; and

(B) military construction, facility maintenance and repair, and compliance with applicable environmental laws at military installations outside the United States at which the Secretary anticipates the United States will have an enduring presence.

(3) Funds in the Department of Defense Overseas Facility Investment Recovery Account shall remain available until expended.

(4) Not later than December 1 of each year, the Secretary of Defense shall submit to the congressional defense committees a report detailing all expenditures made from the Department of Defense Overseas Facility Investment Recovery Account during the preceding fiscal year.

(c) TREATMENT OF AMOUNTS CORRESPONDING TO THE VALUE OF PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS.—In the case of a payment referred to in subsection (b)(1) for the residual value of real property or improvements at an overseas military facility, the portion of the payment that is equal to the depreciated value of the investment made with nonappropriated funds shall be deposited in the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note). The Secretary of Defense may use amounts in the account (in such an aggregate amount as is provided in advance by appropriation Acts) for the purpose of acquiring, constructing, or improving commissary stores and nonappropriated fund instrumentalities.

(d) OMB REVIEW OF PROPOSED OVERSEAS BASING SETTLEMENTS.—(1) The Secretary of Defense may not enter into an agreement of settlement with a host country regarding the release

to the host country of improvements made by the United States to facilities at an installation located in the host country until 30 days after the date on which the Secretary submits the proposed settlement to the Director of the Office of Management and Budget. The prohibition set forth in the preceding sentence shall apply only to agreements of settlement for improvements having a value in excess of $10,000,000. The Director shall evaluate the overall equity of the proposed settlement. In evaluating the proposed settlement, the Director shall consider such factors as the extent of the United States capital investment in the improvements being released to the host country, the depreciation of the improvements, the condition of the improvements, and any applicable requirements for environmental remediation or restoration at the installation.

(2) Each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on each proposed agreement of settlement that was not submitted by the Secretary to the Director of the Office of Management and Budget in the previous year under paragraph (1) because the value of the improvements to be released pursuant to the proposed agreement did not exceed $ 10,000,000.

(e) CONGRESSIONAL OVERSIGHT OF USE OF PAYMENTS-IN-KIND FOR CONSTRUCTION OR OPERATIONS.—(1) Before concluding an agreement for acceptance of military construction or facility improvements as a payment-in-kind, the Secretary of Defense shall submit to the congressional defense committees a notification on the proposed agreement. Any such notification shall contain the following:

(A) A description of the military construction project or facility improvement project.

(B) An explanation of the military requirement to be satisfied with the project.

(C) A certification that the project is included in the current future-years defense program.

(2) Before concluding an agreement for acceptance of host nation support or host nation payment of operating costs of United States forces as a payment-in-kind, the Secretary of Defense shall submit to the congressional defense committees a notification on the proposed agreement. Any such notification shall contain the following:

(A) A description of each activity to be covered by the payment-in-kind.

(B) A certification that the costs to be covered by the payment-in-kind are included in the budget of one or more of the military departments or that it will otherwise be necessary to provide for payment of such costs in a budget of one or more of the military departments in the current or the next fiscal year.

(3) When the Secretary of Defense submits a notification of a proposed agreement under paragraph (1) or (2), the Secretary may then enter into the agreement described in the notification only after the end of the 30-day period beginning on the date on which the notification is submitted or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(f) AUTHORIZED USE OF PAYMENTS-IN-KIND.—(1) A military construction project~~, as defined in chapter 159 of this title,~~ may be accepted as a payment-in-kind ~~contribution pursuant to~~ required by a bilateral agreement with a host country only if that military construction project is authorized by law.

(2) Operations of United States forces may be funded through a payment-in-kind ~~contribution~~ under this section only if the costs covered by such payment are included in the

budget justification documents for the Department of Defense submitted to Congress in connection with the budget submitted under 1105 of title 31.

(3) If funds previously appropriated for a military construction project, facility improvement, or operating costs are subsequently addressed in an agreement for a payment-in-kind ~~contribution~~, the Secretary of Defense shall return to the Treasury funds in the amount equal to the value of the appropriated funds.

(4) This subsection does not apply to a military construction project that—

(A) was ~~specified in~~ required by a bilateral agreement with a host country that was entered into prior to the date of the enactment of the Military Construction Authorization Act for Fiscal Year 2014;

(B) was accepted as payment-in-kind for the residual value of improvements made by the United States at military installations released to the host country under section 2921 of the Military Construction Authorization Act for Fiscal Year 1991 (division B of Public Law 101-510; *10 U.S.C. 2687* note) prior to the date of the enactment of the Military Construction Authorization Act for Fiscal Year 2014; or

(C) subject to paragraph (5), will cost less than the cost specified in subsection (a)(2) of section 2805 of this title for certain unspecified minor military construction projects.

(5) In the case of a military construction project excluded pursuant to paragraph (4)(C) whose cost will exceed the cost specified in subsection (b) of section 2805 of this title for certain unspecified minor military construction projects, the congressional notification requirements and waiting period specified in paragraph (2) of such subsection shall apply.

(g) CONGRESSIONAL OVERSIGHT OF ACCEPTANCE OF IN-KIND CONTRIBUTIONS.—(1) In the event the Secretary of Defense accepts a military construction project to be built for Department of Defense personnel outside the United States as an in-kind contribution required by a bilateral agreement with a host country, the Secretary of Defense shall submit to the congressional defense committees a written notification at least 30 days before the initiation date for any such military construction project.

(2) A notification under paragraph (1) with respect to a proposed military construction project shall include the following:

(A) The requirements for, and purpose and description of, the proposed project.

(B) The cost of the proposed project.

(C) The scope of the proposed project.

(D) The schedule for the proposed project.

(E) Such other details as the Secretary considers relevant.

(h~~g~~) DEFINITIONS.—In this section:

(1) The term "fair market value of the improvements" means the value of improvements determined by the Secretary of Defense on the basis of their highest use.

(2) The term "improvements" includes new construction of facilities and all additions, improvements, modifications, or renovations made to existing facilities or to real property, without regard to whether they were carried out with appropriated or nonappropriated funds.

(3) The term "nonappropriated funds" means funds received from--

(A) the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of this title; or

(B) a nonappropriated fund instrumentality.

(4) The term "nonappropriated fund instrumentality" means an instrumentality of the United States under the jurisdiction of the armed forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces.

TITLE XXIX—DEFENSE BASE CLOSURE AND REALIGNMENT

This proposal would authorize one new round of base closures and realignments, in 2019, using the statutory commission process that has proven, repeatedly, to be the only effective and fair way to eliminate excess Department of Defense (DoD) infrastructure and to reconfigure what must remain.

The Department needs to close and realign bases to meet strategic and fiscal imperatives.

In carrying out the statutory duties to close and realign military installations, the Secretary of Defense is empowered through the BRAC statute to support local communities by providing planning and financial assistance and carry out environmental restoration activities. Further, the transfer authorities exercised by the Secretary shall be subject to section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

The United States is at a strategic turning point after a decade of war. With changes in strategy, come changes in force structure. We are shaping a joint force for the future that will be smaller and leaner, while also agile, flexible, ready, and technologically advanced. Absent a closure process, the Department is locked in a status quo configuration that does not match evolving force structure, doctrine, technology, and other changes.

It is axiomatic. Force structure reductions produce excess capacity; excess capacity is a drain on resources. Furthermore, retaining and sustaining bases that are excess to strategic and mission requirements is wasteful and will drive undesirable reductions in forces, training, and modernization. As Secretary Panetta stated in his press conference on January 26th, "[i]n this budget environment, we simply cannot – simply cannot sustain the infrastructure that is beyond our needs or ability to maintain it".

Savings from base realignment and closure (BRAC) rounds are real and substantial. The first four rounds of BRAC collectively are producing $8 billion in annual recurring savings. BRAC 2005, which focused on reshaping installations to better support forces – as opposed to saving money – is now generating $4 billion in annual recurring savings. The savings generated from BRAC result from avoiding the cost of retaining and operating unneeded infrastructure. DoD no longer has to fund the recurring operation and maintenance (O&M) nor the civilian and military personnel costs for those installations it closed or for the portion of those realigned bases

that it did not retain. Savings from base realignments and closures are retained by the military Services and used to support higher priority programs that enhance modernization, readiness, and quality of life for our armed forces. As the General Accountability Office (GAO) indicated, "[i]n addition to our analyses, studies by other federal agencies, such as CBO, the DoD Inspector General, and the Army Audit Agency, have shown that BRAC savings are real and substantial and are related to cost reductions in key operational areas as a result of BRAC actions." Government Accountability Office, MILITARY BASE CLOSURES, Progress in Completing Actions from Prior Realignments and Closures, GAO-02-433 (April 2002).

Through a global examination of base infrastructure the Department will: eliminate excess infrastructure that is a drain on resources; configure its infrastructure so it is best positioned to meet strategic and mission requirements; and redirect freed-up resources to higher priorities

The Secretary has made it clear that we are at a strategic turning point.

The Department is already looking aggressively at overseas footprint reductions, but overseas infrastructure cuts are not sufficient to make the needed reduction in our infrastructure overhead burden – we must also look at domestic infrastructure reductions. Furthermore, examining overseas infrastructure without undertaking the same effort with respect to our domestic infrastructure would limit the comprehensiveness and creativity of the effort.

One need only look back at recent history to recall similar strategic crossroads: the end of the cold war in the late 1980s and the catastrophic events of September 11, 2001. At both those points in history, the Department and Congress agreed that changes in force structure must be accompanied by corresponding changes in support infrastructure. Congress created the BRAC process for that reason, and it has emerged as the only fair, objective, and proven process for closing and realigning military installations in the United States.

Budget Implications: Specific budget implications will be determined by the analysis authorized by this statute. Implementation costs will be substantial. This upfront funding, however, will be offset by resulting savings which will be even more substantial. For instance, the 2005 round required $35 billion over the statutory six-year implementation period. This investment generated $15 billion in savings during its six-year implementation period and has begun generating net annual savings in Fiscal Year (FY) 2012 of $4 billion that will recur each year thereafter.

Changes to Existing Law: This proposal would make changes to existing law as follows:

TITLE 5, UNITED STATES CODE

§ 6304. Annual leave; accumulation

(a)***

*   *   *   *   *   *   *

(d)(1)***

* * * * * * *

(3)(A) For the purpose of this subsection, the closure of, and any realignment with respect to, an installation of the Department of Defense pursuant to ~~the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note)~~ <u>a base closure law, as that term is defined in section 101(a)(17) of title 10,</u> during any period, the closure of an installation of the Department of Defense in the Republic of Panama in accordance with the Panama Canal Treaty of 1977, and the closure of any other installation of the Department of Defense, during the period beginning on October 1, 1992, and ending on December 31, 1997, shall be deemed to create an exigency of the public business and any leave that is lost by an employee of such installation by operation of this section (regardless of whether such leave was scheduled) shall be restored to the employee and shall be credited and available in accordance with paragraph (2).

TITLE 10, UNITED STATES CODE

§ 101. Definitions

(a) IN GENERAL.—The following definitions apply in this title:

* * * * * * *

(17) The term "base closure law" means the following:

(A) Section 2687 of this title.

(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(C) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

<u>(D) The Defense Base Closure and Realignment Act of 2016.</u>

* * * * * * *

§ 2667. Leases: non-excess property of military departments and Defense Agencies

(a)***

* * * * * * *

(e) DEPOSIT AND USE OF PROCEEDS.—(1)(A) The Secretary concerned shall deposit in a special account in the Treasury established for that Secretary the following:

(i) All money rentals received pursuant to leases entered into by that Secretary under this section.

(ii) All proceeds received pursuant to the granting of easements by that Secretary under section 2668 of this title.

(iii) All proceeds received by that Secretary from authorizing the temporary use of other property under the control of that Secretary.

(B) Subparagraph (A) does not apply to the following proceeds:

(i) Amounts paid for utilities and services furnished lessees by the Secretary concerned pursuant to leases entered into under this section.

(ii) Money rentals referred to in paragraph (3), (4), or (5).

(C) Subject to subparagraphs (D) and (E), the proceeds deposited in the special account established for the Secretary concerned shall be available to the Secretary, in such amounts as provided in appropriation Acts, for the following:

(i) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities.

(ii) Construction or acquisition of new facilities.

(iii) Lease of facilities.

(iv) Payment of utility services.

(v) Real property maintenance services.

(D) At least 50 percent of the proceeds deposited in the special account established for the Secretary concerned shall be available for activities described in subparagraph (C) only at the military installation or Defense Agency location where the proceeds were derived.

(E) If the proceeds deposited in the special account established for the Secretary concerned are derived from activities associated with a military museum described in section 489(a) of this title, the proceeds shall be available for activities described in subparagraph (C) only at that museum.

(2) Payments for utilities and services furnished lessees pursuant to leases entered into under this section shall be credited to the appropriation account or working capital fund from which the cost of furnishing the utilities and services was paid.

(3) Money rentals received by the United States directly from a lease under this section for agricultural or grazing purposes of lands under the control of the Secretary concerned (other than lands acquired by the United States for flood control or navigation purposes or any related purpose, including the development of hydroelectric power) may be retained and spent by the Secretary concerned in such amounts as the Secretary considers necessary to cover the administrative expenses of leasing for such purposes and to cover the financing of multiple-land use management programs at any installation under the jurisdiction of the Secretary.

(4) Money rentals received by the United States from a lease under subsection (g) at a military installation approved for closure or realignment under a base closure law before January 1, 2005, shall be deposited into the account established under section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; *10 U.S.C. 2687* note).

(5) Money rentals received by the United States from a lease under subsection (g) at a military installation approved for closure or realignment under a base closure law ~~on or after January 1, 2005,~~ from January 1, 2005 through December 31, 2005, shall be deposited into the account established under section 2906A(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(6) Money rentals received by the United States from a lease under subsection (g) at a military installation approved for closure or realignment under a base closure law on or after January 1, 2006, shall be deposited into the account established under section 2906 of the Defense Base Closure and Realignment Act of 2016.

TITLE 49, UNITED STATES CODE

§ 47151. Authority to transfer an interest in surplus property

* * * * * * *

(e) REQUESTS BY PUBLIC AGENCIES.—Except with respect to a request made by another department, agency, or instrumentality of the executive branch of the United States Government, such a department, agency, or instrumentality shall give priority consideration to a request made by a public agency (as defined in section 47102) for surplus property described in subsection (a) (other than real property that is subject to ~~section 2687 of title 10, section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note), or section 2905 of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note)~~ a base closure law, as that term is defined in section 101(a)(17) of title 10), for use at a public airport.

Section 131 of Military Construction Appropriation Act, 2003 (Public Law 107-249)

SEC. 131. (a) REQUESTS FOR FUNDS FOR ENVIRONMENTAL RESTORATION AT BRAC SITES IN FUTURE FISCAL YEARS.—In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year after fiscal year 2003, the amount requested for environmental restoration, waste management, and environmental compliance activities in such fiscal year with respect to military installations approved for closure or realignment under the base closure laws shall accurately reflect the anticipated cost of such activities in such fiscal year.

(b) BASE CLOSURE LAWS DEFINED.—In this section, the term "base closure laws" ~~means the following:~~

~~(1) Section 2687 of title 10, United States Code.~~

~~(2) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).~~

~~(3) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).~~ has the meaning given the term "base closure law" in section 101(a)(17) of title 10, United States Code.

National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160)

SEC. 1334. ENVIRONMENTAL EDUCATION OPPORTUNITIES PROGRAM.

* * * * * * * *

(a)***

(k) DEFINITIONS.—For purposes of this section:

(1) The term “base closure law” means the following:

(A) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

<u>(C) The Defense Base Closure and Realignment Act of 2016.</u>

* * * * * * * *

SEC. 2918. DEFINITIONS.

(a) SUBTITLE OF TITLE XXIX.—In this subtitle:

(1) The term “base closure law” means the following:

(A) The provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note.).

<u>(C) The Defense Base Closure and Realignment Act of 2016.</u>

* * * * * * * *