SEC. __. EXTENSION AND REVISIONS TO THE PROHIBITION ON PROVIDING FUNDS TO THE ENEMY.

(a) EXTENSION.—Subtitle E of title VIII of the National Defense Authorization Act for Fiscal Year 2015 (10 U.S.C. 2302 note) is amended—

(1) in section 841—

(A) in subsection (i)(1) in the matter preceding subparagraph (A), by striking " 2016, 2017, and 2018" and inserting "2016 through 2021" and

(B) in subsection (n), by striking "December 31, 2019" and inserting "December 31, 2021"; and

(2) in section 842(b)(1), by striking "2016, 2017, and 2018" and inserting "2016 through 2021".

(b) IDENTIFICATION OF PERSONS AND ENTITIES.—Section 841(a) of such Act (10 U.S.C. 2302 note) is amended in the matter preceding paragraph (1) by striking "in consultation with".

(c) INCLUSION OF ADDITIONAL COMBATANT COMMANDS.—Paragraph (4) of section 843 of such Act (10 U.S.C. 2302 note) is amended—

(1) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (E), (F), and (I), respectively;

(2) by inserting after subparagraph (C) the following new subparagraph:

"(D) The United States Northern Command."; and

(3) by inserting after subparagraph (F) (as redesignated by paragraph (1) of this subsection) the following new subparagraphs:

"(G) The United States Special Operations Command.

"(H) The United States Strategic Command.".

(d) EXPANSION OF COVERED CONTRACTS.—Paragraph (5) of such section is amended—

(1) by striking "with an estimated value in excess of $50,000"; and

(2) by striking ", in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities".

(e) EXPANSION OF COVERED PERSON OR ENTITY.—Paragraph (6) of such section is amended by striking "involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities".

[PLEASE NOTE: THE "CHANGES TO EXISTING LAW" SECTION BELOW SETS OUT IN RED-LINE FORMAT HOW THE LEGISLATIVE TEXT ABOVE WOULD AMEND EXISTING LAW.]

Section-by-Section Analysis

This proposal expands the applicability of the statutory authorities initially authorized under Sections 841, 842, and 843 of the National Defense Authorization Act (NDAA) for Fiscal Year 2015 (Public Law 113-291) entitled "Never Contract with the Enemy." The changes outlined in this proposal are required to meet specific National Military Strategy (NMS), POTUS & SECDEF Anti-Corruption goals and objectives and address Government Accountability Office's (GAO-17-317) High-Risk Series report of February 2017, under Contract Management "Challenges Related to Operational Contract Support." The proposal specifically addresses shortcomings with foreign vendor vetting, of which the statutory authorities in Sections 841 and 842 play a critical role both in force protection and reducing the operational risk of providing funding to the enemy. This proposal significantly enables the protection of globally positioned U.S. Forces and it strengthens Combatant Command programs to prohibit U.S. Taxpayer funds received under a covered contract, grant, or cooperative agreement from a "covered person or entity" (e.g. Enemy).

Specifically, this proposal expands the authorities outlined in sections 841 and 842 to all nine combatant commands, extends by two years the authorities, and it expands the applicability to all contracts with performance outside the United States, regardless of type of operation or the dollar value of the covered contract, grant or cooperative agreement.

The 2015 NMS tasks the Joint Forces and coalition partners to preserve alliances, expand partnerships, and maintain a global stabilizing presence in support of international security and stability operations, placing emphasis on the presence of U.S. military forces in key locations around the world. Furthermore, Joint Publication 3-0 (*Joint Operations*) informs joint forces on the importance and interrelations of the subcomponents of the overarching complex system called the Operational Environment. These sub-systems are often referred to as the Political, Military, Economic, Social, Information, Infrastructure model and the nature of their interaction

affect how the commander plans, organizes, and conducts joint operations. Specifically, a significant portion of the 'economic' subcomponent is often influenced through contract awards for locally provided goods and services. Combatant Commands (CCMDs) operating in non-contingency, non-hostile locations rely heavily on contracted support to demonstrate strategic partnerships in countries worldwide. The enemy continues to expand areas of influence and find safe havens in areas other than those designated as contingency environments in order to advance transnational objectives. The 2016 "Worldwide Threat Assessment of the U.S. Intelligence Community" stated that terrorist and insurgent groups are increasingly capable of conducting effective insurgent campaigns, given their membership growth and accumulation of large financial and materiel caches. In order to "never contract with the enemy" and to combat such enemy activities, it is imperative for all the CCMDs and respective Federal Agencies to have the requisite statutory authorities in place, regardless of the type of operation, to identify persons and entities that provide federal funds, goods and services to the "enemy" and enable immediate action to be taken to terminate, void or restrict contract(s), grant(s) and cooperative agreement(s) with such individuals or entities. The proposal therefore removes the "contingency operation" and dollar threshold parameters to ensure Congress' intent of prohibiting funds from the enemy is met in full.

These proposed changes would provide the requisite flexibility and authorities to all Combatant Commanders worldwide to take action, and tailor their methodologies of implementation to their specific mission sets and area of responsibility consideration, to ensure against contracted personnel or entities who have been identified as actively opposing the United States. Given the current global threat environment, the United States must have the requisite authorities to meet its National Security Strategies and defeat the enemy across the spectrum of irregular warfare. The 841 and 842 authorities are critical to the achievement of the specified military strategies, joint force security operations (e.g. force protection on forward operating bases) and prohibiting funds from reaching the enemy.

Budget Implications: There would be no budgetary impact for the Department of Defense or civilian agencies as a result of this legislative change because the proposal only expands the applicability of the authorities, extends the reporting periods, and extends the sunset date of the law; therefore, there is not an increase to the overall budget requirements of the Department of Defense or other agencies.

Changes to Existing Law: This proposal would amend subtitle E of title VIII of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (10 U.S.C. 2302 note) as follows:

SEC 841. PROHIBITION ON PROVIDING FUNDS TO THE ENEMY.

(a) IDENTIFICATION OF PERSONS AND ENTITIES.—The Secretary of Defense shall, in conjunction with the Director of National Intelligence and ~~in consultation with~~ the Secretary of State, establish in each covered combatant command a program to identify persons and entities within the area of responsibility of such command that—

(1) provide funds, including goods and services, received under a covered contract, grant, or cooperative agreement of an executive agency directly or indirectly to a covered person or entity; or

(2) fail to exercise due diligence to ensure that none of the funds, including goods and services, received under a covered contract, grant, or cooperative agreement of an executive agency are provided directly or indirectly to a covered person or entity.

(b) NOTICE OF IDENTIFIED PERSONS AND ENTITIES.—

(1) NOTICE.—Upon the identification of a person or entity as being described by subsection (a), the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or the specified deputies of the commander) shall be notified, in writing, of such identification of the person or entity.

(2) RESPONSIVE ACTIONS.—Upon identification receipt of a notice under paragraph (1), the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or the specified deputies of the commander) may notify the heads of contracting activities, or other appropriate officials of the agency or command, in writing of such identification.

(3) MAKING OF NOTIFICATIONS.—Any written notification pursuant to this subsection shall be made in accordance with procedures established to implement the revisions of regulations required by this section.

(c) AUTHORITY TO TERMINATE OR VOID CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS AND TO RESTRICT FUTURE AWARD.—Not later than 270 days after the date of the enactment of this Act, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised to provide that, upon notice from the head of an executive agency (or the designee of such head) or the commander of a covered combatant command (or the specified deputies of the commander) pursuant to subsection (b), the head of contracting activity of an executive agency, or other appropriate official, may do the following:

(1) Restrict the award of contracts, grants, or cooperative agreements of the executive agency concerned upon a written determination by the head of contracting activity or other appropriate official that the contract, grant, or cooperative agreement would provide funds received under such contract, grant, or cooperative agreement directly or indirectly to a covered person or entity.

(2) Terminate for default any contract, grant, or cooperative agreement of the executive agency concerned upon a written determination by the head of contracting activity or other appropriate official that the contractor, or the recipient of the grant or cooperative agreement, has failed to exercise due diligence to ensure that none of the funds received under the contract, grant, or cooperative agreement are provided directly or indirectly to a covered person or entity.

(3) Void in whole or in part any contract, grant, or cooperative agreement of the executive agency concerned upon a written determination by the head of contracting activity or other appropriate official that the contract, grant, or cooperative agreement provides funds directly or indirectly to a covered person or entity.

(d) CLAUSE.—

(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this

Act, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised to require that—

(A) the clause described in paragraph (2) shall be included in each covered contract, grant, and cooperative agreement of an executive agency that is awarded on or after the date that is 270 days after the date of the enactment of this Act; and

(B) to the maximum extent practicable, each covered contract, grant, and cooperative agreement of an executive agency that is awarded before the date of the enactment of this Act shall be modified to include the clause described in paragraph (2).

(2) CLAUSE DESCRIBED.—The clause described in this paragraph is a clause that—

(A) requires the contractor, or the recipient of the grant or cooperative agreement, to exercise due diligence to ensure that none of the funds, including goods and services, received under the contract, grant, or cooperative agreement are provided directly or indirectly to a covered person or entity; and

(B) notifies the contractor, or the recipient of the grant or cooperative agreement, of the authority of the head of contracting activity, or other appropriate official, to terminate or void the contract, grant, or cooperative agreement, in whole or in part, as provided in subsection (c).

(3) TREATMENT AS VOID.—For purposes of this section:

(A) A contract, grant, or cooperative agreement that is void is unenforceable as contrary to public policy.

(B) A contract, grant, or cooperative agreement that is void in part is unenforceable as contrary to public policy with regard to a segregable task or effort under the contract, grant, or cooperative agreement.

(4) PUBLIC COMMENT.—The President shall ensure that the process for revising regulations required by paragraph (1) shall include an opportunity for public comment, including an opportunity for comment on standards of due diligence required by this section.

(e) REQUIREMENTS FOLLOWING CONTRACT ACTIONS.—Not later than 270 days after the date of the enactment of this Act, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised as follows:

(1) To require that any head of contracting activity, or other appropriate official, taking an action under subsection (c) to terminate, void, or restrict a contract, grant, or cooperative agreement notify in writing the contractor or recipient of the grant or cooperative agreement, as applicable, of the action.

(2) To permit the contractor or recipient of a grant or cooperative agreement subject to an action taken under subsection (c) to terminate or void the contract, grant, or cooperative agreement, as the case may be, an opportunity to challenge the action by requesting an administrative review of the action under the procedures of the executive agency concerned not later than 30 days after receipt of notice of the action.

(f) ANNUAL REVIEW; PROTECTION OF CLASSIFIED INFORMATION.—

(1) ANNUAL REVIEW.—The Secretary of Defense, in conjunction with the

Director of National Intelligence and in consultation with the Secretary of State shall, on an annual basis, review the lists of persons and entities previously covered by a notice under subsection (b) as having been identified as described by subsection (a) in order to determine whether or not such persons and entities continue to warrant identification as described by subsection (a). If a determination is made pursuant to such a review that a person or entity no longer warrants identification as described by subsection (a), the Secretary of Defense shall notify the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or the specified deputies of the commander) in writing of such determination.

(2) PROTECTION OF CLASSIFIED INFORMATION.—Classified information relied upon to make an identification in accordance with subsection (a) may not be disclosed to a contractor or a recipient of a grant or cooperative agreement with respect to which an action is taken pursuant to the authority provided in subsection (c), or to their representatives, in the absence of a protective order issued by a court of competent jurisdiction established under Article I or Article III of the Constitution of the United States that specifically addresses the conditions upon which such classified information may be so disclosed.

(g) DELEGATION OF CERTAIN RESPONSIBILITIES.—

(1) COMBATANT COMMAND RESPONSIBILITIES.—The commander of a covered combatant command may delegate the responsibilities in this section to any deputies of the commander specified by the commander for purposes of this section. Any delegation of responsibilities under this paragraph shall be made in writing.

(2) NONDELEGATION OF RESPONSIBILITY FOR CERTAIN ACTIONS.—The authority provided by subsection (c) to terminate, void, or restrict contracts, grants, and cooperative agreements, in whole or in part, may not be delegated below the level of head of contracting activity, or equivalent official for purposes of grants or cooperative agreements.

(h) ADDITIONAL RESPONSIBILITIES OF EXECUTIVE AGENCIES.—

(1) SHARING OF INFORMATION ON SUPPORTERS OF THE ENEMY.—The Secretary of Defense shall, in consultation with the Director of the Office of Management and Budget, carry out a program through which agency components may provide information to heads of executive agencies (or the designees of such heads) and the commanders of the covered combatant commands (or the specified deputies of the commanders) relating to persons or entities who may be providing funds, including goods and services, received under contracts, grants, or cooperative agreements of the executive agencies directly or indirectly to a covered person or entity. The program shall be designed to facilitate and encourage the sharing of risk and threat information between executive agencies and the covered combatant commands.

(2) INCLUSION OF INFORMATION ON CONTRACT ACTIONS IN FAPIIS AND OTHER SYSTEMS.—Upon the termination, voiding, or restriction of a contract, grant, or cooperative agreement of an executive agency under subsection (c), the head of contracting activity of the executive agency shall provide for the inclusion in the Federal Awardee Performance and Integrity Information System (FAPIIS), or other formal system of records on contractors or entities, of appropriate information on the termination, voiding, or restriction, as the case may be, of the contract, grant, or cooperative agreement.

(3) REPORTS.—The head of contracting activity that receives a notice pursuant to subsection (b) shall submit to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specified deputies) a report on the action, if any, taken by the head of contracting activity pursuant to subsection (c), including a determination not to terminate, void, or restrict the contract, grant, or cooperative agreement as otherwise authorized by subsection (c).

(i) REPORTS.—

(1) IN GENERAL.—Not later than March 1 of ~~2016, 2017, and 2018~~ 2016 through 2021, the Director of the Office of Management and Budget shall submit to the appropriate committees of Congress a report on the use of the authorities in this section in the preceding calendar year, including the following:

(A) For each instance in which an executive agency exercised the authority to terminate, void, or restrict a contract, grant, and cooperative agreement pursuant to subsection (c), based on a notification under subsection (b), the following:

(i) The executive agency taking such action.

(ii) An explanation of the basis for the action taken.

(iii) The value of the contract, grant, or cooperative agreement voided or terminated.

(iv) The value of all contracts, grants, or cooperative agreements of the executive agency in force with the person or entity concerned at the time the contract, grant, or cooperative agreement was terminated or voided.

(B) For each instance in which an executive agency did not exercise the authority to terminate, void, or restrict a contract, grant, and cooperative agreement pursuant to subsection (c), based on a notification under subsection (b), the following:

(i) The executive agency concerned.

(ii) An explanation of the basis for not taking the action.

(2) FORM.—Any report under this subsection may, at the election of the Director—

(A) be submitted in unclassified form, but with a classified annex; or

(B) be submitted in classified form.

(j) INAPPLICABILITY TO CERTAIN CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.—The provisions of this section do not apply to contracts, grants, and cooperative agreements that are performed entirely inside the United States.

(k) NATIONAL SECURITY EXCEPTION.—Nothing in this section shall apply to the authorized intelligence or law enforcement activities of the United States Government.

(l) CONSTRUCTION WITH OTHER AUTHORITIES.—Except as provided in subsection (m), the authorities in this section shall be in addition to, and not to the exclusion of, any other authorities available to executive agencies to implement policies and purposes similar to those set forth in this section.

(m) COORDINATION WITH CURRENT AUTHORITIES.—

(1) REPEAL OF SUPERSEDED AUTHORITY RELATED TO CENTCOM.—Effective 270 days after the date of the enactment of this Act, section 841 of the National

Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1510; 10 U.S.C. 2302 note) is repealed.

(2) REPEAL OF SUPERSEDED AUTHORITY RELATED TO DEPARTMENT OF DEFENSE.—Effective 270 days after the date of the enactment of this Act, section 831 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 127 Stat. 810; 10 U.S.C. 2302 note) is repealed.

(3) USE OF SUPERSEDED AUTHORITIES IN IMPLEMENTATION OF REQUIREMENTS.—In providing for the implementation of the requirements of this section by the Department of Defense, the Secretary of Defense may use and modify for that purpose the regulations and procedures established for purposes of the implementation of the requirements of section 841 of the National Defense Authorization Act for Fiscal Year 2012 and section 831 of the National Defense Authorization Act for Fiscal Year 2014.

(n) SUNSET.—The provisions of this section shall cease to be effective on ~~December 31, 2019~~ December 31, 2021.

SEC. 842. ADDITIONAL ACCESS TO RECORDS

(a) CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, applicable regulations shall be revised to provide that, except as provided under subsection (c)(1), the clause described in paragraph (2) may, as appropriate, be included in each covered contract, grant, and cooperative agreement of an executive agency that is awarded on or after the date of the enactment of this Act.

(2) CLAUSE.—The clause described in this paragraph is a clause authorizing the head of the executive agency concerned, upon a written determination pursuant to paragraph (3), to examine any records of the contractor, the recipient of a grant or cooperative agreement, or any subcontractor or subgrantee under such contract, grant, or cooperative agreement to the extent necessary to ensure that funds, including goods and services, available under the contract, grant, or cooperative agreement are not provided directly or indirectly to a covered person or entity.

(3) WRITTEN DETERMINATION.—The authority to examine records pursuant to the contract clause described in paragraph (2) may be exercised only upon a written determination by the contracting officer, or comparable official responsible for a grant or cooperative agreement, upon a finding by the commander of a covered combatant command (or the specified deputies of the commander) or the head of an executive agency (or the designee of such head) that there is reason to believe that funds, including goods and services, available under the contract, grant, or cooperative agreement concerned may have been provided directly or indirectly to a covered person or entity.

(4) FLOWDOWN.—A clause described in paragraph (2) may also be included in any subcontract or subgrant under a covered contract, grant, or cooperative agreement if the subcontract or subgrant has an estimated value in excess of $50,000.

(b) REPORTS.—

(1) IN GENERAL.—Not later than March 1 of 2016 through March 1 of 2021, ~~2017, and 2018~~, the Director of the Office of Management and Budget shall submit to the appropriate committees of Congress a report on the use of the authority provided by this

section in the preceding calendar year.

(2) ELEMENTS.—Each report under this subsection shall identify, for the calendar year covered by such report, each instance in which an executive agency exercised the authority provided under this section to examine records, explain the basis for the action taken, and summarize the results of any examination of records so undertaken.

(3) FORM.—Any report under this subsection may be submitted in classified form.

(c) RELATIONSHIP TO EXISTING AUTHORITIES APPLICABLE TO CENTCOM.—

(1) APPLICABILITY.—This section shall not apply to contracts, grants, or cooperative agreements covered under section 842 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1513; 10 U.S.C. 2313 note).

(2) EXTENSION OF CURRENT AUTHORITIES APPLICABLE TO CENTCOM.—Section 842(d)(1) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1514; 10 U.S.C. 2313 note) is amended by striking "date of the enactment of this Act" and inserting "date of the enactment of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015".

SEC. 843. DEFINITIONS.

In this subtitle:

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

(A) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services, the Committee on Oversight and Government Reform, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

(2) CONTINGENCY OPERATION.—The term "contingency operation" has the meaning given that term in section 101(a)(13) of title 10, United States Code.

(3) CONTRACT.—The term "contract" includes a contract for commercial items but is not limited to a contract for commercial items.

(4) COVERED COMBATANT COMMAND.—The term "covered combatant command" means the following

(A) The United States Africa Command.

(B) The United States Central Command.

(C) The United States European Command.

(D) The United States Northern Command.

(~~D~~E) The United States Pacific Command.

(~~E~~F) The United States Southern Command.

(G) The United States Special Operations Command.

(H) The United States Strategic Command.

(~~F~~I) The United States Transportation Command.

(5) COVERED CONTRACT, GRANT, OR COOPERATIVE AGREEMENT

DEFINED.—The term "covered contract, grant, or cooperative agreement" means a contract, grant, or cooperative agreement ~~with an estimated value in excess of $50,000~~ that is performed outside the United States, including its possessions and territories~~, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities~~.

(6) COVERED PERSON OR ENTITY.—The term "covered person or entity" means a person or entity that is actively opposing United States or coalition forces ~~involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities~~.

(7) EXECUTIVE AGENCY.—The term "executive agency" has the meaning given that term in section 133 of title 41, United States Code.

(8) HEAD OF CONTRACTING ACTIVITY.—The term "head of contracting activity" has the meaning described in section 1.601 of the Federal Acquisition Regulation.

(9) UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS.—The term "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" means the guidance issued by the Office of Management and Budget in part 200 of chapter II of title 2 of the Code of Federal Regulations.