SEC. ___. AUTHORITY FOR PAYMENT OF DEATH GRATUITY TO TRUSTS.

Section 1477(a) of title 10, United States Code, is amended—

(1) in paragraph (1)—

(A) in the first sentence, by inserting “, or one or more trusts legally established under any Federal, State, or territorial law,” after “one or more persons”; and

(B) in the second sentence, by inserting “or trust” after “person” both places it appears; and

(2) in paragraph (2), by inserting “, or a trust for the benefit of a person other than the spouse,” after “other than the spouse”.

[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 would allow military members to designate that, upon their death, the gratuity provided pursuant to section 1475 of title 10, United States Code, be paid to a trust that is legally established under the laws of any State. The amount of the death gratuity has been increased on several occasions and is currently set at $100,000 pursuant to 10 U.S.C. 1478. Originally designed to meet the immediate needs of a servicemember's family following his or her death, the death gratuity, at its current level, frequently accounts for a sizeable portion of a servicemember’s estate. Allowing payment of the death gratuity to a trust would provide greater planning capability for a servicemember to provide payments to those who require the protections of a trust, such as minor children or incapacitated adults.

There is currently no statutory authority for a servicemember to designate a trust as the beneficiary of his or her death gratuity. However, there are several reasons a servicemember might prefer to designate a trust as the beneficiary of a death gratuity, rather than to designate a natural person. For example, servicemembers often wish to name their minor children as beneficiaries in their estate. In some instances, simply leaving money to a surviving spouse is acceptable. However, in other situations, such as where a servicemember has children and does not have a good relationship with the other parent, a servicemember might choose to provide directly for a child. Because minor children are unable to be paid the proceeds of the death gratuity directly, the death gratuity is paid in accordance with state inheritance laws. This often results in the money being placed in a custodial account or in a trust that will terminate upon the minor reaching the age of 18. Such a system does not allow the servicemember to designate the

trustee that he or she would choose to manage the minor's trust. Furthermore, many estate planning professionals suggest that trusts or custodial accounts for minors should not terminate upon the age of majority, but rather at a time when it is anticipated the child will be mature enough to manage his or her own finances. Under this proposal, servicemembers would have better planning capability to provide for their minor children in a manner that ensures responsible management of the death gratuity payment.

In addition to trusts for minors, trusts are often established for either incapacitated adults or adults who have simply proven incapable of managing significant amounts of money. In the case of incapacitated or "special needs" adults, trusts allow money to be used on behalf of the beneficiary while not diminishing Social Security disability payments as a result of personal assets. This proposal would allow the death gratuity to serve such individuals while not impacting eligibility for Social Security disability payments. Servicemembers might also desire to name a sibling or other adult that the servicemember finds incapable of handling a significant payment of money for reasons such as substance abuse or prior financial mismanagement. Under this proposal, servicemembers could establish a trust for the benefit of the intended beneficiary, while naming a separate trustee to ensure the proceeds to the trust are utilized in a responsible manner.

Budget Implications: There are no resource requirements or proposed offset associated with this proposal. It is likely that, if this measure succeeds, there would be a slight diminution of gift tax receipts to the Treasury triggered by the transfer of death gratuity directly to trusts instead of first being given to an intermediary custodian.

Changes to Existing Law: This proposal would make the following changes to section 1477 of title 10, United States Code:

§ 1477. Death Gratuity: eligible survivors.

(a) DESIGNATION OF RECIPIENTS.—(1) On and after July 1, 2008, or such earlier date as the Secretary of Defense may prescribe, a person covered by section 1475 or 1476 of this title may designate one or more persons<u>, or one or more trusts legally established under any Federal, State, or territorial law,</u> to receive all or a portion of the amount payable under section 1478 of this title. The designation of a person <u>or trust</u> to receive a portion of the amount shall indicate the percentage of the amount, to be specified only in 10 percent increments, that the designated person <u>or trust</u> may receive. The balance of the death gratuity, if any, shall be paid in accordance with subsection (b).

(2) If a person covered by section 1475 or 1476 of this title has a spouse, but designates a person other than the spouse<u>, or a trust for the benefit of a person other than the spouse,</u> to receive all or a portion of the amount payable under section 1478 of this title, the Secretary concerned shall provide notice of the designation to the spouse.

(b) DISTRIBUTION OF REMAINDER; DISTRIBUTION IN ABSENCE OF DESIGNATED RECIPIENT.—If a person covered by section 1475 or 1476 of this title does not make a designation under subsection (a) or designates only a portion of the amount payable under

section 1478 of this title, the amount of the death gratuity not covered by a designation shall be paid as follows:

(1) To the surviving spouse of the person, if any.

(2) If there is no surviving spouse, to any surviving children (as prescribed by subsection (d)) of the person and the descendants of any deceased children by representation.

(3) If there is none of the above, to the surviving parents (as prescribed by subsection (c)) of the person or the survivor of them.

(4) If there is none of the above, to the duly-appointed executor or administrator of the estate of the person.

(5) If there is none of the above, to other next of kin of the person entitled under the laws of domicile of the person at the time of the person's death.

(c) TREATMENT OF PARENTS.—For purposes of subsection (b)(3), parents include fathers and mothers through adoption. However, only one father and one mother may be recognized in any case, and preference shall be given to those who exercised a parental relationship on the date, or most nearly before the date, on which the decedent entered a status described in section 1475 or 1476 of this title.

(d) TREATMENT OF CHILDREN.—Subsection (b)(2) applies, without regard to age or marital status, to—

(1) legitimate children;

(2) adopted children;

(3) stepchildren who were a part of the decedent's household at the time of his death;

(4) illegitimate children of a female decedent; and

(5) illegitimate children of a male decedent—

(A) who have been acknowledged in writing signed by the decedent;

(B) who have been judicially determined, before the decedent's death, to be his children;

(C) who have been otherwise proved, by evidence satisfactory to the Secretary of Veterans Affairs, to be children of the decedent; or

(D) to whose support the decedent had been judicially ordered to contribute.

(e) EFFECT OF DEATH BEFORE RECEIPT OF GRATUITY.—If a person entitled to all or a portion of a death gratuity under subsection (a) or (b) dies before the person receives the death gratuity, it shall be paid to the living survivor next in the order prescribed by subsection (b).