Section-by-Section Analysis

TITLE I—PROCUREMENT 8
Subtitle A—Authorization of Appropriations 8
Sections 101 through 105 9
Subtitle B—Army Programs 9
Section 111 9
Section 112 10
Subtitle C—Air Force Programs 11
Section 121 11
Subtitle D—Air Force Programs 12
Section 131 12
Section 132 14
TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION 18
Section 201 18
TITLE III—OPERATION AND MAINTENANCE 18
Section 301 18
Section 302 18
Section 303 22
Subtitle A—Active Forces 28
Section 401 29
Subtitle B—Reserve Forces 29
Section 411 29
Section 412 29
Section 413 29
Section 414 29
Section 415 29
Subtitle C—Authorization of Appropriations 29
Section 421 29
TITLE V—OTHER AUTHORIZATIONS 29
Subtitle A—Officer Personnel Policy Generally 29
Section 501 29
Section 502 33

Section 503 36
Section 504 36
Section 505 38
Subtitle B—Reserve Component Management 40
Section 511 40
Section 512 42
Section 513 45
Section 514 47
Section 515 49
Section 516 52
Section 517 53
Subtitle C—Member Education and Training 55
Section 521 55
Section 522 56
Section 523 57
Subtitle D—Defense Dependents' Education and Military Family Readiness Matters 64
Section 531 64
Section 532 66
Section 533 68
Section 534 71
Subtitle E—Other Matters 74
Section 541 74
Section 542 76
Section 543 78
Section 544 79
Section 545 80
Section 546 82
Section 547 85
Section 548 92
TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS 97
Subtitle A—Pay and Allowances 97
Section 601 97
Section 602 98
Subtitle B—Bonuses and Special Incentive Pays 100

Section 611 100
Section 612 113
Section 613 115
Section 614 125
Section 615 127
Section 616 134
Subtitle C—Retired Pay 140
Section 621 141
Section 622 141
Section 623 142
Section 624 142
Section 625 142
Section 626 143
Section 627 143
Section 628 143
Section 629 143
Section 630 144
Subtitle D—Survivor Benefits 150
Section 631 150
Section 632 151
Subtitle E—Other Provisions Related to Retired Pay 184
Section 641 185
TITLE VII—HEALTHCARE PROVISIONS 188
Subtitle A—TRICARE and other Health Care Benefits 188
Section 701 188
Section 702 201
Section 703 213
Section 704 214
Section 705 218
Section 706 223
Subtitle B—Health Care Administration 226
Section 711 226
Section 712 229
TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS 230

Section 801 230
Section 802 234
Section 803 236
Section 804 237
Section 805 239
Section 806 255
Section 807 256
Section 808 263
Section 809 265
Section 810 269
Section 811 272
Section 812 273
Section 813 274
Section 814 282
Section 815 285
Section 816 286
Section 817 288
Section 818 291
Section 819 292
Section 820 296
Section 821 299
TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT 300
Section 901 300
Section 902 310
Section 903 319
Section 904 322
Section 905 324
Section 906 326
Section 907 327
Section 908 329
TITLE X—GENERAL PROVISIONS 349
Subtitle A—Financial Matters 349
Section 1001 349
Section 1002 351

Section 1003 356
Subtitle B—Counter-Drug Activities 358
Section 1011 358
Section 1012 361
Section 1013 366
Subtitle C—Transportation Matters 369
Section 1021 369
Section 1022 370
Section 1023 372
Section 1024 374
Section 1025 377
Section 1026 386
Subtitle D—Miscellaneous Authorities and Limitations 388
Section 1031 388
Section 1032 390
Section 1033 392
Section 1034 395
Section 1035 397
TITLE XI—CIVILIAN PERSONNEL MATTERS 399
Section 1101 399
Section 1102 400
Section 1103 402
Section 1104 404
Section 1105 407
Section 1106 413
Section 1107 414
Section 1108 415
Section 1109 420
Section 1110 423
Section 1111 424
Subtitle B—Federal Employees Paid Parental Leave 427
Section 1121 427
Section 1122 427
TITLE XII—MATTERS RELATED TO FOREIGN NATIONS 432

Subtitle A—Consolidation and Reform of Department of Defense Security Cooperation Authorities 432
Section 1201 432
Section 1202 453
Section 1203 458
Section 1204 465
Section 1205 470
Section 1206 473
Section 1207 483
Section 1208 487
Section 1209 500
Subtitle B—Other Matters 505
Section 1211 505
Section 1212 509
Section 1213 511
Section 1214 512
Section 1215 515
Section 1216 516
Section 1217 518
Section 1218 520
Section 1219 523
Section 1220 525
Section 1221 527
Section 1222 529
Section 1223 531
Section 1224 532
Section 1225 533
Section 1226 538
Section 1227 539
Section 1228 542
Section 1229 548
TITLE XIII—[RESERVED] 550
TITLE XIV—OTHER AUTHORIZATIONS 550
Subtitle A—Military Programs 550
Section 1401 550

Section 1402 550
Section 1403 551
Section 1404 551
Section 1405 551
Section 1406 555
Section 1407 555
Subtitle B—Other Matters 555
Section 1411 555
Section 1412 556
Section 1413 556
TITLE XV—AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR OVERSEAS CONTINGENCY OPERATIONS 569
TITLE XVI—SERVICEMEMBERS CIVIL RELIEF ACT 569
Section 1601 569
Section 1602 569
Section 1603 569
Section 1604 571
Section 1605 571
Section 1606 571
Section 1607 571
Section 1608 571
Section 1609 571
Section 1610 571
Section 1611 572
Section 1612 572
Section 1613 572
Section 1614 572
Section 1615 572
Section 1616 574
TITLE XVII—UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT ... 577
Section 1701 577
Section 1702 578
Section 1703 579
Section 1704 579
Section 1705 579

Section 1706 579
Section 1707 580
Section 1708 580
Section 1709 580
Section 1710 581
DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS 581
TITLE XXI—ARMY MILITARY CONSTRUCTION 581
TITLE XXII—NAVY MILITARY CONSTRUCTION 581
TITLE XXIII—AIR FORCE MILITARY CONSTRUCTION 581
TITLE XXIV—DEFENSE AGENCIES MILITARY CONSTRUCTION 581
TITLE XXV—NORTH ATLANTIC TREATY ORGANIZATION SECURITY INVESTMENT PROGRAM 581
TITLE XXVI—GUARD AND RESERVE FORCES FACILTIES 581
TITLE XXVII—BASE REALIGHNMENT AND CLOSURE ACTIVITIES 581
TITLE XXVIII—MILITARY CONSTRUCTION GENERAL PROVISIONS 582
Section 2801 582
Section 2802 585
Section 2803 591
Section 2804 592
Section 2805 595
Section 2806 597
Section 2807 604
Section 2808 605
Section 2809 608
Section 2810 611
Section 2811 613
Section 2812 615
TITLE XXIX—DEFENSE BASE CLOSURE AND REALIGNMENT 621

Section-by-Section Analysis

TITLE I—PROCUREMENT

Subtitle A—Authorization of Appropriations

Sections 101 through 105 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.

Subtitle B—Army Programs

Section 111 would allow the Secretary of the Army to enter into a multiyear contract for AH-64E Apache helicopters for fiscal year (FY) 2017 through FY 2021. The proposed multiyear procurement (MYP) (FY 2017-2021) will produce significant savings and facilitate industrial stability.

The AH-64E is a core aviation program and is approved for full-rate production through the current Future Year Defense Program. The minimum need for the AH-64E is not expected to decrease during the contemplated MYP period

If the proposal is approved, the Army buy will consist of 275 AH-64E Apache helicopters between FY 2017 and FY 2021. The Request for Proposal (RFP) was released with a minimum quantity of 46 per year, with options for remanufactured quantities up to 75 per year. The RFP included new build quantities, as a contract option, of up to 30 per year. In no year would total quantities of remanufactured and new build aircraft exceed 90 per year.

Budget Implications: This proposed AH-64E Apache MYP is anticipated to result in significant program savings of up to $425.7 million or 11.2 percent. The Director of Cost Assessment and Program Evaluation has completed a cost analysis for the purpose of section 2334(e)(1) of title 10, USC, and the analysis supports that the use of a MYP contract will result in anticipated savings of 10% or possibly more. A multiyear contract will result in minimum annual procurement quantities necessary for the prime manufacturer to leverage the certainty of future production to gain subcomponent savings across all subcontractors. This stems the potential for cost growth of the program.

Budget estimates and associated funding levels for the AH-64E program for FY 2017 and beyond are predicated on MYP authorization. Current budget estimates and associated funding levels are insufficient to support anything other than the planned MYP of AH-64E Apache helicopters without significant reduction in quantity each year.

	Annual Contracts	**MYP Alternative**
Total Estimated Contract Price	$3,801.14	$3,375.41
$ Cost Savings Over Annual		$425.73
% Cost Savings Over Annual		11.2%

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army Base	$480.6	$558.0	$599.6	$602.8	$540.8	Aircraft Procurement,	1	5	A05111A

PROC						Army			
Army Adv PROC	$116.7	$120.1	$126.4	$115.9	0	Aircraft Procurement, Army	1	6	A05111C
Total	$597.2	$678.1	$726.0	$718.7	$540.8				

Notes:
1. Resource Requirements are for the Multiyear contract only. Does not represent total budget requirement.
2. Numbers may not add due to rounding.

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

Section 112 would allow the Secretary of the Army to enter into a multiyear contract for UH-60M/HH-60M Black Hawk helicopters for fiscal years (FY) 2017 through FY 2021. The proposed multiyear procurement (MYP) (FY 2017-2021) will produce significant savings and facilitate industrial stability.

The UH-60M/HH-60M Black Hawk is a core aviation program and is approved for full-rate production through the Future Years Defense Program. If the proposal is approved, the Army buy will consist of 193 UH-60M aircraft and 75 HH-60M aircraft between FY 2017 and FY 2021. The Navy is not expected to participate in this MYP. The Request for Proposal solicitation was released with a minimum quantity of 36 helicopters per year, a base quantity of 50 helicopters per year with options to increase the maximum quantity to 72 helicopters per year.

Budget Implications: The proposed multiyear contract is anticipated to result in a cost savings of $455.4 million (Then Year $) or 10.9 percent when compared to a series of Single Year Procurement (SYP) contracts. A multiyear contract will result in at least the minimum annual procurement quantities necessary for the prime manufacturer to leverage the certainty of future production to gain subcomponent savings across all subcontractors.

Then Year $ Millions	**Annual Contracts**	**Multiyear Procurement Alternative**
Total Contract Price	$4,178.1	$3,722.6
$ Cost Savings Over Annual		$455.4
% Cost Savings Over Annual		10.9%

Budget estimates and associated funding levels for the UH-60M/HH-60M Black Hawk program for FY 2017 and beyond are predicated on MYP authorization. Current budget estimates and associated funding levels are insufficient to support anything other than the planned Black Hawk helicopters without significant reduction in quantity each year.

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

Army Base PROC	$543.2	$652.6	$830.9	$611.2	$808.8	Aircraft Procurement, Army	01	11	A05002
Army Adv PROC	$113.0	$44.9	$29.5	$46.3	$0.0	Aircraft Procurement, Army	01	12	AA0005
Total	$656.1	$697.5	$860.4	$657.5	$808.8				

Note: Resource requirements are for the multiyear procurement contract only. Does not represent total budget requirement.

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

Subtitle C—Air Force Programs

Section 121, procurement of Ship to Shore Connector (SSC) craft is required to preserve the Fleet's requirement to transport weapon systems, equipment, cargo, and personnel of the assault element from the Marine Air/Ground Task Force. SSC is the replacement for the existing Landing Craft, Air Cushion (LCAC), which began reaching the end of its service life in Fiscal Year (FY) 2015. For timely and efficient replacement of LCAC's capability, the Fleet requires steady delivery of 73 SSC craft through FY 2027. The SSC program competitively awarded a contract to Textron Systems in FY 2012 for Detail Design and Construction of one Test and Training craft and eight option craft through FY 2016. The program's Acquisition Strategy calls for the continuation of sole source awards to Textron from FY 2017-2021 for continued production of craft and for the introduction of competition for a Follow Yard (2nd Shipbuilder) to continue the orderly ramp up of craft per year to meet the Navy's requirement.

Notwithstanding section 2306 of title 10, United States Code, this proposal would allow the Secretary of the Navy to award a Block Buy contract to Textron for up to 8 craft for the period 2017-2018 as reflected in PB17. In the event PB17 quantities are modified for the period 2017-2018, the number of craft under the Block Buy would be modified equivalently. Advance Procurement (AP) funding is not requested.

The Department of Defense expects the Block Buy contracts to yield similar benefits to those realized by the Block Buy contract strategies employed by other shipbuilding programs. Block Buy contracts would generate substantial savings compared to the annual procurement cost estimates and would: (1) result in stabilization and optimization of production workforces and facilities; (2) improve procurement stability by enabling longer term vendor contract commitments; and (3) reduce disruptions in vendor delivery schedules.

Block Buy contract authority is appropriate for the SSC program due to its low risk, stable costs, and confirmed need by the Fleet. SSC is a non-developmental program based on existing Navy and commercial standards, the craft detail design is nearing completion, and production began on the first two crafts in early FY 2015. The first craft, a Test and Training craft, is planned to be delivered in the third quarter of FY 2017, prior to starting fabrication of craft awarded under the Block Buy contracts. Furthermore, program costs remain within established targets.

Textron will submit two pricing proposals: one proposal for annual with options and a second proposal for a Block Buy. Comparison of the pricing proposals for annual with options and Block Buy will allow the Department to verify Block Buy savings.

Budget Implications: Based on analysis of potential SSC contract scenarios and cost reductions seen in previous Block Buy contracts, the Navy estimates a total savings of $8 million associated with Block Buy contracting. This represents approximately an estimated 3 percent savings over the Annual Resource Requirements with Options baseline. These savings are currently reflected in the DON's FYDP budget submission and the SSC Resource Requirements table below.

SSC Resource Requirements

	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Appropriation From	Budget Activity	P1 Line Item	Program Element
PB17	128.1	333.0	501.4	625.5	653.6	Shipbuilding and Conversion, Navy (SCN)	05	26	0204228N
Total	128.1	333.0	501.4	625.5	653.6				

SSC Block Buy Savings per year

SAVINGS PER YEAR ($ MILLIONS)			
	FY 2017	**FY 2018**	**Total**
Annual Quantities	2	6	8
Baseline: Annual with Options 8 craft	$130.1	$339.0	$469.1
Block Buy 8 craft	$128.1	$333.0	$461.1
PB17 Delta	0	0	0
Savings Compared with Baseline (Annual with Options)			
	$2.0	$6.0	$8.0

****Block Buy savings are already reflected in the Navy's FYDP budget submission**

Changes to Existing Law: This proposal would make no changes to the text of existing law.

Subtitle D—Air Force Programs

Section 131 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 132 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, Army	01	131	0202079 A
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	**FY**	**FY**	**FY**	**FY**	**Appropriation From**	**Budget**	**Dash 1**	**Program**

	2017	2018	2019	2020	2021		Activity	Line Item	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.

Section 502 proposal would amend sections 3911(b), 6323(a)(2), and 8911(b) of title 10, United States Code, to provide the Secretaries of the military departments continuing authority to approve the voluntary retirement at 20 years of service for officers, but with a reduction to six years active commissioned service, instead of 10 years, until September 30, 2019.

Revision of this authority, through 30 September 2019, will provide continued access to an invaluable force shaping tool. In a budget-constrained environment, with declining manpower requirements and high officer retention rates, the Services must be equipped with robust and flexible tools to retain officers with the required skill sets. This authority provides the Secretary concerned with the flexibility to size and shape the force with the proper balance of skill sets and providing viable career paths to the officer corps.

Budget Implications: If the Army were to exercise the waiver authority for all 755 eligible personnel, separation costs for Military Personnel, Army (MPA), are estimated to increase by $13.05 million in fiscal years 2017-2021. This is a result of the higher Temporary Early Retirement Authority (TERA) payments expected for a Soldier that retires as a Captain or Major (O-3/O-4) as opposed to a Sergeant (E-5). This increased cost is projected to be offset by voluntary retirements for officers who are retirement eligible, but are deferring retirement until they meet the minimum commissioned service criteria and retire as officers vice enlisted. The Army G-1 estimates that there are 755 officers that would meet these criteria in the fiscal years 2017-2021. The early retirements of these 755 officers would result in a reduction in the pay and allowance requirements of -$94.2 million. Therefore, the Army estimates a net reduction in MPA requirements of -$81.1 million if this proposal is adopted. 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**
Army	(12.41)	(33.48)	(25.80)	(7.73)	(1.69)	Military Personnel, Army	1	50	0904901A
TERA	4.22	4.49	4.34	0	0				
P&A	(16.63)	(37.97)	(30.14)	(7.73)	(1.69)				
Navy does not intend to use this authority, which would have been funded in the following account: Military Personnel, Navy.									
Air Force does not intend to use this authority, which would have been funded in the following account: Military Personnel, Air Force.									
Marine Corps does not intend to use this authority, which would have been funded in the following account: Military Personnel, Marine Corps.									
Total	(12.41)	(33.48)	(25.80)	(7.73)	(1.69)				

The proposal will also have an impact on the Mandatory Treasury outlays from the Department of Defense (DoD) Military Retirement Fund (MRF). If the proposal is enacted, all 755 eligible Soldiers would be eligible to draw retirement from the MRF up to two years earlier than under the current law but with a reduced rate for lower Years of Service. The DoD Office of the Actuary estimates that this proposal will increase Mandatory Treasury outlays $37 million over the fiscal years 2017-2021, but will continue to accrue long term savings to the treasury due to the lower retirement payments beyond FY 2021.

MRF RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash 1 Line Item**	**Program Element**
MRF (Army)	20.6	16.8	4.3	(1.1)	(3.6)	MERHCF, Army			
Navy does not intend to use this authority, which would have been funded in the following account: MERHCF, Navy.									
Air Force does not intend to use this authority, which would have been funded in the following account: MERHCF, Air Force.									
Marine Corps does not intend to use this authority, which would have been funded in the following account: MERHCF, Marine Corps.									
Total	**20.6**	**16.8**	**4.3**	**(1.1)**	**(3.6)**				

PERSONNEL AFFECTED									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash 1 Line Item**	**Program Element**

Army	458	313	267	0	0	Military Personnel, Army	1	50	0904901A
Service members retiring at the higher officer rate	248	260	247	0	0				
Soldiers Eligible for Immediate Retirement	210	53	20	0	0				
Navy does not intend to use this authority, which would have been funded in the following account: Military Personnel, Navy.									
Air Force does not intend to use this authority, which would have been funded in the following account: Military Personnel, Air Force.									
Marine Corps does not intend to use this authority, which would have been funded in the following account: Military Personnel, Marine Corps.									
Total	458	313	267	0	0				

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

§ 3911. Twenty years or more: regular or reserve commissioned officers

(a)(1) The Secretary of the Army may, upon the officer's request, retire a regular or reserve commissioned officer of the Army who has at least 20 years of service computed under section 3926 of this title, at least 10 years of which have been active service as a commissioned officer.

(b) (1) The Secretary of Defense may authorize the Secretary of the Army, during the period specified in paragraph (2), to reduce the requirement under subsection (a) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary of the Army) of not less than ~~eight~~ six years.

(2) The period specified in this subparagraph is the period beginning on January 7, 2011, and ending on ~~September 30, 2018~~ September 30, 2019.

* * * * * * *

§ 6323. Officers: 20 years

(a)(1) An officer of the Navy or the Marine Corps who applies for retirement after completing more than 20 years of active service, of which at least 10 years was service as a commissioned officer, may, in the discretion of the President be retired on the first day of any month designated by the President.

(2)(A) The Secretary of Defense may authorize the Secretary of the Navy, during the period specified in subparagraph (B), to reduce the requirement under paragraph (1) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary) of not less than ~~eight~~ six years.

(B) The period specified in this subparagraph is the period beginning on January 7, 2011, and ending on ~~September 30, 2018~~ September 30, 2019.

* * * * * * *

§ 8911. Twenty years or more: regular or reserve commissioned officers

(a)(1) The Secretary of the Air Force may, upon the officer's request, retire a regular or reserve commissioned officer of the Air Force who has at least 20 years of service computed under section 3926 of this title, at least 10 years of which have been active service as a commissioned officer.

(b)(1) The Secretary of Defense may authorize the Secretary of the Air Force, during the period specified in paragraph (2), to reduce the requirement under subsection (a) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary of the Air Force) of not less than ~~eight~~ six years.

(2) The period specified in this subparagraph is the period beginning on January 7, 2011, and ending on ~~September 30, 2018~~ September 30, 2019.

Section 503 would repeal section 9337 of title 10, United States Code, to eliminate the statutory requirement that the President appoint a chaplain at the United States Air Force Academy (USAFA) for a term of four years. Currently, there is a statutory requirement for the President to appoint military chaplains for the USAFA and the United States Military Academy. No such requirement applies with respect to the United States Naval Academy (USNA). Instead, military chaplains are assigned to the USNA through the Navy personnel system. Similarly, section 9337 is not necessary because military chaplains are assigned to the USAFA through the Air Force personnel system.

Budget Implications: This proposal has no budget implications because military chaplains still would be assigned to the USAFA through the Air Force personnel system. This legislation has not been used since 2009; therefore, no cost information is available.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Air Force	0	0	0	0	0	N/A	N/A	N/A	N/A
Total	0	0	0	0	0	N/A	N/A	N/A	N/A

Changes to Existing Law: This section would repeal section 9337 of title 10, United States Code, as follows:

~~**§ 9337. Chaplain**~~

~~There shall be a chaplain at the Academy, who must be a clergyman, appointed by the President for a term of four years. The chaplain is entitled to the same allowances for public quarters as are allowed to a captain, and to fuel and light for quarters in kind. The chaplain may be reappointed.~~

Section 504 would authorize the Secretaries of the military departments to defer promotion consideration for Reserve Component (RC) service members in a non-participatory

(membership points only) status. This would significantly reduce the potential loss of trained assets, in which the Department of Defense (DoD) has heavily invested, when an individual desires to re-affiliate with the military following their election to "suspend" their military career.

Currently, section 14301 of title 10, United States Code, requires service members identified on the Reserve Active Status List (RASL) to be considered for promotion to the next higher grade. This includes certain categories of reservist on the RASL who are in the Individual Ready Reserve (IRR) and the Standby Reserve, by DoD guidance, and who remain vulnerable for promotion consideration but are not actively participating -- receiving membership only points.

Most officers upon release from the Active Component (AC) are transferred to the IRR without affiliating in a position with a Reserve Component that allows for participation (either paid or non-paid). In some instances, these trained assets have chosen to temporarily suspend their military career and voluntarily transferred to the IRR for a variety of reasons; others may have secured a civilian opportunity that affords them "key employee" status requiring transfer to the Standby Reserve where they are ineligible for participation. Many of these individuals may have already received their first promotion deferment prior to their transfer to the IRR.

Upon a decision to resume their active service, some service members learn of their ineligibility due to being twice deferred for promotion. Others, who received their first deferment while in the IRR, potentially lack sufficient time upon returning to participation status, due to timing prior to next promotion consideration, to demonstrate the potential to serve in the next higher grade and thus are discharged upon receipt of their second deferral for promotion (twice failure of selection for promotion results in removal from the RASL). This serves as an obstacle to the Continuum of Service and reduces opportunities to re-affiliate trained and experienced Airmen should they seek to return to active status in any of the Air Force components.

Individuals assigned to the IRR are required to be screened to the Inactive Status List (IASL) after two years. Legislation prevents promotion consideration of those assigned to the IASL, thereby protecting removal from military affiliation until said time as defined by current policy and affording the opportunity to return to participation status at a later date. Unfortunately, under current practice the Department loses these trained and experienced Airmen before their mandatory transfer to the IASL.

Providing the RCs flexibility to remove from promotion consideration those individuals whom are least competitive during a period in which they are receiving membership only points, provides the ability to capitalize on these pre-trained assets and their potential civilian skill sets should the individual elect to return to military service.

Budget Implications: This action proposes a technical change that would result in a cost savings to the Department. The Air Force Reserve holds three boards per year for members in the non-participating IRR and the cost savings to pay and travel for board members and manpower costs at the personnel headquarters is reflected in the following table. 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	-.181	-.186	-.192	-.197	-.203	Reserve Personnel, Air Force	01	80	
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									
Army does not intend to use this authority, which would have been funded in the following accounts: Reserve Personnel, Army and National Guard Personnel, Army.									
Air National Guard does not intend to use this authority, which would have been funded in the following account: National Guard Personnel, Air Force.									
The proposed change only applies to Secretaries of the military departments. Thus, it is not applicable in its current language to the Coast Guard Reserve.									
Total	-.181	-.186	-.192	-.197	-.203				

Changes to Existing Law: This proposal would make the following change to section 14301 of title 10, United States Code:

§ 14301. Eligibility for consideration for promotion: general rules

(a) – (i) * * *

* * * * * * *

- ADD –

(j) CERTAIN OFFICERS NOT TO BE CONSIDERED FOR SELECTION FOR PROMOTION.— The Secretary of the military department concerned may provide that an officer who is in an active status, but in a duty status in which the only points the officer accrues under section 12732(a)(2) of this title are pursuant to subparagraph (C)(i) of that section (relating to membership in a reserve component), shall not be considered for selection for promotion at any time the officer otherwise would be so considered. Any such officer may remain on the reserve active-status list.

Section 505 would add a new section 1725 and amend section 523 of title 10, United States Code, to establish the Senior Military Acquisition Advisor/Adjunct Professor Program at the Defense Acquisition University. The program would allow an officer in the grade of colonel or (Navy) captain with extensive defense acquisition experience and who is eligible to retire to remain in service as an O-6 Senior Military Acquisition Advisor in support of their Service Acquisition Executive and assigned as an Adjunct Professor at the Defense Acquisition University. The revision to section 523 would exclude the advisors from Service computations of authorized military strengths.

Senior Military Acquisition Advisors would be competitively selected and appointed based upon demonstrated experience in acquisition. Senior Military Acquisition Advisors would provide senior level acquisition expertise to the Service Acquisition Executive of their military department for the remainder of their career. An officer who is continued on active duty under this program is not eligible for consideration for selection for promotion. A Senior Military Acquisition Advisor will serve no longer than a 5 year term. Not more than 5 Senior Military Acquisition Advisors would be employed in each military department as identified by the Service Acquisition Executive and approved by the Under Secretary of Defense (Acquisition, Technology & Logistics). When a Senior Military Acquisition Advisor retires with a minimum of 3 years of service, the officer may, at the discretion of the President, be retired as a brigadier general or rear admiral (lower half). There would be no increase in retired pay or other compensation to any person by reason of retirement of an officer in the grade of brigadier general or rear admiral (lower half) under this proposal.

Senior Military Acquisition Advisors would be assigned to the Defense Acquisition University and report to the Service Acquisition Executive in their function as advisor. Senior Military Acquisition Advisors would primarily provide strategic, technical, and programmatic advice to the Service Acquisition Executive on matters pertaining to the defense acquisition system including procurement, research and development, advanced technology, test and evaluation, production, program management, systems engineering and lifecycle logistics. Military faculty members from the Senior Military Acquisition Advisor/Adjunct Professor Program would also serve as adjunct professors at the Defense Acquisition University on an as needed basis and will be required, among other duties, to develop case studies to stimulate critical thinking and improve student understanding of complex acquisition-related matters as well as to develop tools and capabilities to improve acquisition outcomes.

Senior Military Acquisition Advisors would be appointed by the President, by and with the advice and consent of the Senate, from officers in the Defense Acquisition Corps who are at the grade of O-6, have at least 12 years of acquisition experience, and at least 30 years of active commissioned service at the time of appointment.

Budget Implications: The table below details resource requirements and proposed offsets associated with this proposal.

RESOURCE REQUIREMENTS ($MILLIONS)									
$M	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	1.2	1.2	1.3	1.3	1.4	Military Personnel, Army	01	5	N/A
Navy	1.4	1.6	1.8	2.1	2.2	Military Personnel, Navy	01	5	N/A
Air Force	1.1	1.2	1.2	1.2	1.2	Military Personnel, AF	01	5	N/A
Total	3.7	4.0	4.3	4.6	4.8				

Changes to Existing Law: This proposal (1) would add a new section 1725 to title 10, United States Code, shown in full in the legislative text above, and (2) would make the following change to section 523 of that title:

§ 523. Authorized strengths: commissioned officers on active duty in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain

(a) ***

* * * * * * *

(b) Officers in the following categories shall be excluded in computing and determining authorized strengths under this section:

(1) Reserve officers—

(A) on active duty as authorized under section 115(a)(1)(B) or 115(b)(1) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title;

(B) on active duty under section 10211, 10302 through 10305, or 12402 of this title or under section 708 of title 32; or

(C) on full-time National Guard duty.

(2) General and flag officers.

(3) Medical officers.

(4) Dental officers.

(5) Warrant officers.

(6) Retired officers on active duty under a call or order to active duty for 180 days or less.

(7) Retired officers 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.

(8) Permanent professors of the United States Military Academy and the United States Air Force Academy and professors of the United States Naval Academy who are career military professors (as defined in regulations prescribed by the Secretary of the Navy), but not to exceed 50 from any such academy.

(9) Officers who are Senior Military Acquisition Advisors under section 1725 of this title, but not to exceed 15.

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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 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

[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.

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 Force	01	90
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 and fiscal year 2017, 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.

Section 522 would add sections 12304a and 12304b of title 10, United States Code, to the list of authorities that will extend the vocational rehabilitation benefit period of eligibility for veterans. The vocational rehabilitation program must be utilized within twelve-years of being discharged or released from active service. Currently, if a veteran was prevented from

participating in a vocational rehabilitation program under chapter 31 of title 38, United States Code, within the period of eligibility due to certain activations to active service, the period of eligibility will be extended for the period of active service plus four months. Reserve component (RC) members eligible for the vocational rehabilitation program will have their period of eligibility extended when they volunteer to perform active duty under section 12301(d) of title 10. This proposal will allow RC members who are involuntarily activated under section 12304a or 12304b of title 10 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 the same vocational rehabilitation program benefits. The RC member who volunteered for duty under section 12301(d) may have their vocational rehabilitation program eligibility benefits extended. The RC member who was involuntarily activated under section 12304a or 12304b for similar duty, may not have their program eligibility benefits extended.

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 VA funds the Vocational Rehabilitation benefit at no cost to DoD. This benefit is elective. Veterans who have elected to use this benefit should be expected to use the benefit whether their period of eligibility is extended or not.

Changes to Existing Law: This proposal would amend section 3103(f) of title 38, United States Code, as follows:

§ 3103. Periods of Eligibility

*** * * * ***

(f) In any case in which the Secretary has determined that a veteran was prevented from participating in a vocational rehabilitation program under this chapter within the period of eligibility otherwise prescribed in this section as a result of being ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, ~~or 12304,~~ 12304, 12304a, or 12304b of title 10, such period of eligibility shall not run for the period of such active duty service plus four months.

Section 523 would revise the statutes relating to enrollment at the Air Force Institute of Technology (AFIT) of persons other than Air Force personnel, including the authority to charge and retain tuition for such persons. First, it extends the reimbursement and tuition provisions to a new category of students: non-detailed persons (non-detailed members, non-detailed civilians, and federal scholarship recipients). Second, while somewhat involved itself, the proposal actually simplifies Chapter 901 by combining into one section (the amended Section 9314a), the various categories of students: detailed members and detailed civilians (currently covered in Section 9314), defense industry employees (currently covered in Section 9314a), and

the new category of non-detailed persons. The revised proposal also moves the coverage for civilian faculty (now in Section 9314) and acceptance of research grants (now in Section 9314a) into Section 9314b that deals with AFIT administration.

Section 9314(e) of title 10, United States Code, currently addresses AFIT's authority for reimbursement and tuition. The authority pertains to collecting and retaining tuition paid by the department, agency, or component detailing an individual for instruction. The current language does not provide explicit authority that would allow AFIT to collect and retain tuition funding through alternative means to offset the cost of instruction generated by non-detailed persons. This proposal would provide AFIT the authority to collect and retain tuition from non-detailed persons. The proposal would also reorganize the relevant statutes into a more logical manner.

Currently, 10 U.S.C. 9314 requires the Department of the Army, the Department of the Navy, and the Department of Homeland Security to bear the cost of instruction for military members detailed to AFIT for instruction. In addition, AFIT can charge tuition for the cost of providing instruction at AFIT for any civilian employee of a military department, another component of the Department of Defense (DoD), any other Federal agency, and up to 125 defense industry civilians. AFIT is authorized to retain and use these tuition collections to cover the marginal costs of such instruction. This is a consequence of the fact that AFIT is centrally funded by the Air Force to educate Air Force officers and enlisted personnel assigned to AFIT for instruction. These other students represent an added cost to the institution and the institution is required to recover the costs associated with instructing the added student base.

AFIT is increasingly receiving requests from individual military members who are not detailed to AFIT with the desire to pay the tuition using various payment programs. Additionally, DoD organizations, whose budgets are becoming increasingly constrained, are looking at the possibility of utilizing other tuition payment programs to pay for attendance at AFIT. In fact, AFIT has enrolled non-detailed students in programs who have paid tuition bills. However, AFIT's current authorization does not address AFIT's authority to retain and utilize tuition payments obtained from self-pay means, scholarship/fellowship programs, or other means available to non-detailed students. Consequently, current legal authorities require AFIT to deposit any tuition collected from these sources to the U.S. Treasury's Miscellaneous Receipts fund.

The proposed amendments to AFIT's authority in 10 U.S.C. 9314 would provide AFIT with the means to collect, retain, and use tuition collections from any sources available to non-detailed students to cover the costs of instruction for non-detailed persons authorized to enroll at AFIT. This proposal would provide more flexibility for those students authorized to attend AFIT by providing new options for obtaining defense-focused education that is applicable to their careers and highly desirable to their services or Federal organizations.

Budget Implications: The table below details resource requirements and proposed offsets associated with this proposal.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY	**FY**	**FY**	**FY**	**FY**	**Appropriation**	**Budget**	**Dash-1**	**Program**

	2017	2018	2019	2020	2021	From	Activity	Line Item	Element
Air Force	$(0.5)	$(0.5)	$(0.5)	$(0.5)	$(0.5)	Operation and Maintenance, Air Force	03	32C	84752F
Navy does not intend to use this authority, which would have been funded from the following account: Operation and Maintenance, Navy.									
Army does not intend to use this authority, which would have been funded from the following account: Operation and Maintenance, Army.									
Total	$(0.5)	$(0.5)	$(0.5)	$(0.5)	$(0.5)				

Changes to Existing Law: This proposal would make the following changes to chapter 901 of title 10, United States Code:

CHAPTER 901—TRAINING GENERALLY

*** * * * ***

9314. ~~Degree granting authority for~~ United States Air Force Institute of Technology: degree granting authority.
9314a. United States Air Force Institute of Technology: ~~admission of defense industry civilians~~ reimbursement and tuition; instruction of persons other than Air Force personnel.
9314b. United States Air Force Institute of Technology: administration.

*** * * * ***

§9314. ~~Degree granting authority for~~ United States Air Force Institute of Technology: degree granting authority

(a) AUTHORITY.—Under regulations prescribed by the Secretary of the Air Force, the commander of the Air University may, upon the recommendation of the faculty of the United States Air Force Institute of Technology, confer appropriate degrees upon graduates of the United States Air Force Institute of Technology who meet the degree requirements.

(b) LIMITATION.—A degree may not be conferred under this section unless—

(1) the Secretary of Education has recommended approval of the degree in accordance with the Federal Policy Governing Granting of Academic Degrees by Federal Agencies; and

(2) the United States Air Force Institute of Technology is accredited by the appropriate civilian academic accrediting agency or organization to award the degree, as determined by the Secretary of Education.

(c) CONGRESSIONAL NOTIFICATION REQUIREMENTS.—(1) When seeking to establish degree granting authority under this section, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives—

(A) a copy of the self-assessment questionnaire required by the Federal Policy Governing Granting of Academic Degrees by Federal Agencies, at the time the assessment is submitted to the Department of Education's National Advisory Committee on Institutional Quality and Integrity; and

(B) the subsequent recommendations and rationale of the Secretary of Education regarding the establishment of the degree granting authority.

(2) Upon any modification or redesignation of existing degree granting authority, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the rationale for the proposed modification or redesignation and any subsequent recommendation of the Secretary of Education on the proposed modification or redesignation.

(3) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing an explanation of any action by the appropriate academic accrediting agency or organization not to accredit the United States Air Force Institute of Technology to award any new or existing degree.

[Transferred to 9314b(c) below] ~~(d) CIVILIAN FACULTY. (1) The Secretary of the Air Force may employ as many civilian faculty members at the United States Air Force Institute of Technology as is consistent with the needs of the Air Force and with Department of Defense personnel limits.~~

~~(2) The Secretary shall prescribe regulations determining—~~

~~(A) titles and duties of civilian members of the faculty; and~~

~~(B) pay of civilian members of the faculty, notwithstanding chapter 53 of title 5, but subject to the limitation set out in section 5373 of title 5.~~

§ 9314a. United States Air Force Institute of Technology: reimbursement and tuition; instruction of persons other than Air Force personnel

~~(c)~~ (a) ~~REIMBURSEMENT AND TUITION~~ MEMBERS OF THE ARMED FORCES OTHER THAN THE AIR FORCE WHO ARE DETAILED TO THE INSTITUTE.—(1) The Department of the Army, the Department of the Navy, and the Department of Homeland Security shall bear the cost of the instruction at the Air Force Institute of Technology that is received by members of the armed forces detailed for that instruction by the Secretaries of the Army, Navy, and Homeland Security, respectively.

(2) Members of the Army, Navy, Marine Corps, and Coast Guard may only be detailed for instruction at the Institute on a space-available basis.

(3) In the case of an enlisted member of the Army, Navy, Marine Corps, ~~and~~ or Coast Guard ~~permitted~~ detailed to receive instruction at the Institute, the Secretary of the Air Force shall charge ~~that member~~ the Secretary concerned only for such costs and fees as the Secretary considers appropriate (taking into consideration the admission of enlisted members on a space-available basis).

~~(4)~~ (b) FEDERAL CIVILIAN EMPLOYEES OTHER THAN AIR FORCE EMPLOYEES WHO ARE DETAILED TO THE INSTITUTE.—~~(A)~~ (1) The Institute shall charge tuition for the cost of providing instruction at the Institute for any civilian employee of a military department ~~(other than a civilian employee of the Department of the Air Force)~~, of another component of the Department of Defense, or of another Federal agency ~~who receives~~ detailed to recieve instruction at the Institute.

~~(B)~~ (2) The cost of any tuition charged an individual under this paragraph shall be borne by the department, agency, or component sending the individual for instruction at the Institute.

[***Deleted as covered by (e)(2) below***] ~~(5) Amounts received by the Institute for the instruction of students under this subsection shall be retained by the Institute. Such amounts shall be available to the Institute to cover the costs of such instruction. The source and disposition of such amounts shall be specifically identified in the records of the Institute.~~

[***Transferred to 9314b(d) below***] ~~(f) ACCEPTANCE OF RESEARCH GRANTS.—(1) The Secretary of the Air Force may authorize the Commandant of the United States Air Force Institute of Technology to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the Institute for a scientific, literary, or educational purpose.~~

~~(2) A qualifying research grant under this subsection is a grant that is awarded on a competitive basis by an entity referred to in paragraph (3) for a research project with a scientific, literary, or educational purpose.~~

~~(3) A grant may be accepted under this subsection only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.~~

~~(4) The Secretary shall establish an account for administering funds received as research grants under this section. The Commandant of the Institute shall use the funds in the account in accordance with applicable provisions of the regulations and the terms and condition of the grants received.~~

~~(5) Subject to such limitations as may be provided in appropriations Acts, appropriations available for the Institute may be used to pay expenses incurred by the Institute in applying for, and otherwise pursuing, the award of qualifying research grants.~~

~~(6) The Secretary shall prescribe regulations for the administration of this subsection.~~

(c) NON-DETAILED PERSONS.—(1) The Secretary of the Air Force may permit persons described in paragraph (2) to receive instruction at the United States Air Force Institute of Technology on a space-available basis.

(2) Paragraph (1) applies to any of the following persons:

(A) A member of the armed forces not detailed for that instruction by the Secretary concerned.

(B) A civilian employee of a military department, of another component of the Department of Defense, of another Federal agency, or of a State's National Guard not detailed for that instruction by the Secretary concerned or head of the other Department of Defense component, other Federal agency, or the National Guard.

(C) A United States citizen who is the recipient of a competitively selected Federal or Department of Defense sponsored scholarship or fellowship with a defense focus in areas of study related to the academic disciplines offered by the Air Force Institute of Technology and which requires a service commitment to the Federal government in exchange for educational financial assistance.

(3) If a scholarship or fellowship described in paragraph (2)(C) includes a stipend, the Institute may accept the stipend payment from the scholarship or fellowship sponsor and make a direct payment to the individual.

~~§ 9314a. United States Air Force Institute of Technology: admission of defense industry civilians~~

~~(a)~~ (d) ~~ADMISSION AUTHORIZED~~ DEFENSE INDUSTRY EMPLOYEES.—(1) The Secretary of the Air Force may permit defense industry employees described in ~~subsection (b)~~ paragraph (4) to receive instruction at the United States Air Force Institute of Technology in accordance with this section. Any such defense industry employee may be enrolled in, and may be provided instruction in, a program leading to a graduate degree or professional continuing education certificate in a defense focused curriculum related to aeronautics and astronautics, electrical and computer engineering, engineering physics, mathematics and statistics, operational sciences, or systems and engineering management.

(2) No more than 125 defense industry employees may be enrolled at the United States Air Force Institute of Technology at any one time under the authority of paragraph (1).

(3) Upon successful completion of the course of instruction at the United States Air Force Institute of Technology in which a defense industry employee is enrolled, the defense industry employee may be awarded an appropriate degree under section 9314 of this title or an appropriate professional continuing education certificate, as applicable.

~~(b)~~ (4) ~~ELIGIBLE DEFENSE INDUSTRY EMPLOYES.—~~For purposes of this section, an eligible defense industry employee is an individual employed by a private firm that is engaged in providing to the Department of Defense significant and substantial defense-related systems, products, or services. A defense industry employee admitted for instruction at the United States Air Force Institute of Technology remains eligible for such instruction only so long asthat person remains employed by the same firm.

~~(c)~~ (5) ~~ANNUAL DETERMINATION BY THE SECRETARY OF THE AIR FORCE.—~~Defense industry employees may receive instruction at the United States Air Force Institute of Technology during any academic year only if, before the start of that academic year, the Secretary of the Air Force, or the designee of the Secretary, determines that providing instruction to defense industry employees under this section during that year—

~~(1)~~ (A) will further the military mission of the United States Air Force Institute of Technology; and

~~(2)~~ (B) will not require an increase in the permanently authorized size of the faculty , an increase in the course offerings of the school, or an increase in the laboratory facilities or other infrastructure of the school.

~~(d)~~ (6) ~~PROGRAM REQUIREMENTS.—~~The Secretary of the Air Force shall ensure that—

~~(1)~~ (A) the curriculum in which defense industry employees may be enrolled under this ~~section~~ subsection is not readily available through other schools and concentrates on the areas of focus specified in ~~subsection (a)~~ paragraph (1) that are conducted by military organizations and defense contractors working in close cooperation; and

~~(2)~~ (B) the course offerings at the United States Air Force Institute of Technology continue to be determined solely by the needs of the Department of Defense.

(e) TUITION.—(1) The United States Air Force Institute of Technology may charge tuition for students enrolled under paragraphs (c)(2)(A) and (c)(2)(B), at the discretion of the Commandant. The United States Air Force Institute of Technology shall charge tuition for students enrolled ~~under this section~~ under paragraph (c)(2)(C) and subsection (d). When

charged, tuition shall be at a rate not less than the rate charged for employees of the United States outside the Department of the Air Force who are detailed to receive instruction at the Institute under subsection (b).

(2) Amounts received by the United States Air Force Institute of Technology for instruction of students enrolled under this section shall be retained by the school to defray the costs of such instruction. The source, and the disposition, of such funds shall be specifically identified in records of the school.

(f) STANDARDS OF CONDUCT.—While receiving instruction at the United States Air Force Institute of Technology, ~~defense industry employees~~ persons enrolled under this section who are not members of the armed forces or Government civilian employees, to the extent practicable, are subject to the same regulations governing academic performance, attendance, norms of behavior, and enrollment as apply to Government civilian employees receiving instruction at the school.

§ 9314b. United States Air Force Institute of Technology: administration

(a) COMMANDANT.—

(1) SELECTION.—The Commandant of the United States Air Force Institute of Technology shall be selected by the Secretary of the Air Force.

(2) ELIGIBILITY.—The Commandant shall be one of the following:

(A) An officer of the Air Force on active duty in a grade not below the grade of colonel who possesses such qualifications as the Secretary considers appropriate and is assigned or detailed to such position.

(B) A member of the Senior Executive Service or a civilian individual, including an individual who was retired from the Air Force in a grade not below brigadier general, who has the qualifications appropriate for the position of Commandant and is selected by the Secretary as the best qualified from among candidates for the position in accordance with a process and criteria determined by the Secretary.

(3) TERM FOR CIVILIAN COMMANDANT.—An individual selected for the position of Commandant under paragraph (2)(B) shall serve in that position for a term of not more than five years and may be continued in that position for an additional term of up to five years.

(b) PROVOST AND ACADEMIC DEAN.-—

(1) IN GENERAL.—There is established at the United States Air Force Institute of Technology the civilian position of Provost and Academic Dean who shall be appointed by the Secretary.

(2) TERM.—An individual appointed to the position of Provost and Academic Dean shall serve in that position for a term of five years.

(3) COMPENSATION.—The individual serving as Provost and Academic Dean is entitled to such compensation for such service as the Secretary shall prescribe for purposes of this section, but not more than the rate of compensation authorized for level IV of the Executive Schedule.

[***Transferred from 9314(d)***] (c) CIVILIAN FACULTY.—(1) The Secretary of the Air Force may employ as many civilian faculty members at the United States Air Force Institute of Technology as is consistent with the needs of the Air Force and with Department of Defense personnel limits.

(2) The Secretary shall prescribe regulations determining—

(A) titles and duties of civilian members of the faculty; and

(B) pay of civilian members of the faculty, notwithstanding chapter 53 of title 5, but subject to the limitation set out in section 5373 of title 5.

[***Transferred from 9314(f)***] (d) ACCEPTANCE OF RESEARCH GRANTS.—(1) The Secretary of the Air Force may authorize the Commandant of the United States Air Force Institute of Technology to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the Institute for a scientific, literary, or educational purpose.

(2) A qualifying research grant under this subsection is a grant that is awarded on a competitive basis by an entity referred to in paragraph (3) for a research project with a scientific, literary, or educational purpose.

(3) A grant may be accepted under this subsection only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(4) The Secretary shall establish an account for administering funds received as research grants under this section. The Commandant of the Institute shall use the funds in the account in accordance with applicable provisions of the regulations and the terms and condition of the grants received.

(5) Subject to such limitations as may be provided in appropriations Acts, appropriations available for the Institute may be used to pay expenses incurred by the Institute in applying for, and otherwise pursuing, the award of qualifying research grants.

(6) The Secretary shall prescribe regulations for the administration of this subsection.

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 (or, if such teacher is employed in a supervisory position or higher, not to exceed four days) of such leave may be granted for any purpose in each school year to such teacher.

Section 533 would authorize the Secretary of Defense to continue to directly support and leverage influence of local educational agencies (LEAs) serving the approximately 617,000 school-aged children from military-connected families living in the United States who do not attend Department of Defense Education Activity (DoDEA) Schools through September 30, 2017 . Over 80% are enrolled in U.S. Public Schools.

The goal of the authority is to support the DoDEA Educational Partnership mission of championing quality education opportunities for school-aged military children in pursuit of promoting continuity in academic and social support programs in LEAs. The DoDEA Educational Partnership Strategies includes:

a. Data and research to enable us to best serve military connected students;
b. Academic and other supports to ensure quality educational options;
c. Social, emotional, and community supports to help address the stresses of military life; and
d. Empowerment of military families to serve as advocates for their child's education. Provide stakeholders with effective resources to support efforts to ease the transition of military students and provide resources to local education agencies (LEA) who educate military children.

This proposal would authorize DoDEA to support the Partnership mission and strategies by providing funding to LEAs, developing partnerships with colleges and universities, and providing outreach to stakeholders. This authority would enable DoDEA to reach beyond the smaller population of military-connected students who attend DoDEA schools, (estimated to be around 4% of the total population of military-connected students in the United States) to the remaining military-connected students who are not eligible to attend DoDEA schools, including students whose parents are among the Reserve forces or the National Guard.

The authority would ensure that the resources shared would support research-based programs that aim to increase student achievement and ease the challenges military children face due to their parents military service. The authority would provide resources to military-connected LEAs to develop and implement projects and opportunities that are designed to:

a. Promote student achievement in the core curricular areas.
b. Ease the challenges that military students face due to transitions and deployments.
c. Support the unique social and emotional needs of military students.
d. Promote distance learning opportunities.

e. Improve educator professional development.
f. Enhance and integrate technology.
g. Encourage parental involvement.

There is a critical need for this authority. The inconsistencies in the quality of education remain significant, and the authority for DoD to directly engage and influence the educational opportunities of military-connected students in public schools has proven to be a powerful tool on behalf of military-connected children.

The need for such assistance is substantial. The authority allows us to address the Secretary's interest in how the Department can optimize educational delivery in the United States for under-performing public schools supporting large military installations. The Secretary has met with families who expressed serious concerns about the poor educational services provided by the public schools supporting our bases.

As further evidence, the Chief of Staff of the Army directed an assessment of the performance of public schools that support Army children and youth. Quality education opportunities for Army children and youth are essential to ensure the readiness and retention of Soldiers. The quality of schools and their children's education is a prime concern of Army families.

The return on investment for such assistance is valid and substantial. To date, DoDEA has awarded more than 273 grants to LEAs, reaching more than 370,000 military connected students in over 1,500 public schools in 33 states. Data indicate that there is significant improvement in student achievement, increased professional development for teachers, and enhanced social and emotional support as a result of these awards. Nearly 80 percent of the grantees are focused on improving student outcomes in STEM (Science, Technology, Engineering and Math) education, which is essential in preparing our students for success in the competitive global world.

The quality of K-12 education is an important criterion for military families as they make career decisions on assignments, and is linked to retention and readiness in the military services.

The authority allows DoD to address the commitments outlined in the Presidential Study Directive, Strengthening Military Families, which outlines DoD goals and metrics to ensure that education, care and support of military families are a top national security priority.

Budget Implications: Neither the authority nor the initiatives implemented under the auspices of the authority create costs to the Services. The proposal requests DoD retain the authority for one additional year to share resources with LEAs supporting military-connected students. 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**
DoDEA	55.0					Operation and Maintenance, Defense-Wide	04	4GTJ	0808899BT
Total	55.0					--	--	--	--

Changes to Existing Law: This proposal would make the following changes to section 574 of the John Warner National Defense Authorization Act for Fiscal Year 2007:

SEC. 574. PLAN AND AUTHORITY TO ASSIST LOCAL EDUCATIONAL AGENCIES EXPERIENCING GROWTH IN ENROLLMENT DUE TO FORCE STRUCTURE CHANGES, RELOCATION OF MILITARY UNITS, OR BASE CLOSURES AND REALIGNMENTS

(a) Plan Required.-Not later than January 1, 2007, the Secretary of Defense shall submit to the congressional defense committees a report setting forth a plan to provide assistance to local educational agencies that experience growth in the enrollment of military dependent students as a result of any of the following events:

(1) Force structure changes.

(2) The relocation of a military unit.

(3) The closure or realignment of military installations pursuant to defense base closure and realignment under the base closure laws.

(b) Elements.-The report required by subsection (a), and each updated report required by subsection (c), shall include the following:

(1) An identification, current as of the date of the report, of the total number of military dependent students who are anticipated to be arriving at or departing from military installations as a result of any event described in subsection (a), including-

(A) an identification of the military installations affected by such arrivals and departures;

(B) an estimate of the number of such students arriving at or departing from each such installation; and

(C) the anticipated schedule of such arrivals and departures.

(2) Such recommendations as the Office of Economic Adjustment of the Department of Defense considers appropriate for means of assisting affected local educational agencies in accommodating increases in enrollment of military dependent students as a result of any such event.

(3) A plan for outreach to be conducted to affected local educational agencies, commanders of military installations, and members of the Armed Forces and civilian personnel of the Department of Defense regarding information on the assistance to be provided under the plan under subsection (a).

(c) Transition of Military Dependents Among Local Educational Agencies.-(1) The Secretary of Defense shall work collaboratively with the Secretary of Education in any efforts to ease the transitions of military dependent students from Department of Defense dependent schools to other schools and among schools of local educational agencies.

(2) The Secretary of Defense may use funds of the Department of Defense Education Activity for the following purposes:

(A) To share expertise and experience of the Activity with local educational agencies as military dependent students make the transitions described in paragraph (1), including transitions resulting from the closure or realignment of military installations under a base closure law, global rebasing, and force restructuring.

(B) To provide grant assistance programs for local educational agencies with military dependent students undergoing the transitions described in paragraph (1), including programs on the following:

(i) Access to virtual and distance learning capabilities and related applications.

(ii) Training for teachers.

(iii) Academic strategies to increase academic achievement.

(iv) Curriculum development.

(v) Support for practices that minimize the impact of transition and deployment.

(vi) Other appropriate services to improve the academic achievement of such students.

(3) The authority provided by this subsection expires ~~September 30, 2016~~ September 30, 2017.

(d) Definitions.-In this section:

(1) The term "base closure law" has the meaning given that term in section 101 of title 10, United States Code.

(2) The term "local educational agency" has the meaning given that term in section 8013(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(9)).

(3) The term "military dependent students" refers to-

(A) elementary and secondary school students who are dependents of members of the Armed Forces;

(B) elementary and secondary school students who are dependents of civilian employees of the Department of Defense; and

(C) elementary and secondary school students who are dependents of personnel who are not members of the Armed Forces or civilian employees of the Department of Defense but who are employed on Federal property.

Section 534. Section 566(a) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 codified the noncompetitive appointment authority for relocating military spouses in a statutory provision at section 3330d of title 5, United States Code (U.S.C.). However, the statutory provision does not include an eligibility period, which has resulted in confusion and differing opinions on Congressional intent. This proposed addition to subsection (c) of section 3330d of title 5, U.S.C. would clearly articulate that there is no time limitation on a

relocating spouse's eligibility for noncompetitive appointment from the date of the service member's permanent change of station orders to the spouses' permanent appointment per duty station.

Currently, Military Spouses must utilize this appointment authority within a maximum of 2 years from the date of the service member's permanent change of station orders. This requirement was promulgated in regulations at Subpart 315.612(d)(1)(i) of Title 5, Code of Federal Regulations (CFR), which restricts the spouse of the service member to an unnecessary limitation in his or her attempting to secure employment while oftentimes handling the issues related to a household move. It is important to note that permanent change of station orders are issued well in advance of a military family arriving at the new duty station, which has caused Military Spouses to miss consideration for employment or have job offers withdrawn because they lost eligibility. This legislative proposal serves to support the military family in enabling the military spouse to pursue their employment search when they have resolved transitionary issues associated with a permanent change of station. These issues would include, but not be limited to, relocation, moving the dependent children and family belongings, stressors of the move, financial concerns, prioritizing life choices, balancing the service member's deployments, and irregular schedules before realistically being able to seek employment.

This proposal would have an immediate impact on the quality of life for not only the military spouse, but for the military family as well. It would lessen external stresses and provide clarity for the command Human Resources Office, in that they do not have to have the spouse appointed within the 2-year period. The proposal would further strengthen the partnership between DoD and the U.S. Office of Personnel Management (OPM) by providing consistent language to address the countless e-mails, phone calls and inquiries on this issue from military spouses seeking employment.

Budget Implications: None. After review, it has been determined that this proposal does not have any budget implications. Implementation of this proposal would not require additional funding or alter the application screening process in any manner that would result in increased costs.

RESOURCE REQUIREMENTS (MILLIONS)									
	FY 2018	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**	**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				
Defense-Wide	0	0	0	0	0				
Total	0	0	0	0	0				

Changes to Existing Law: This proposal would make the following changes to section 3330d subsection (c) of Title 5, United States Code:

5 U.S. Code §3330d. Appointment of certain military spouses

(a) DEFINITIONS.—In this section:

(1) The term "active duty"—

(A) has the meaning given that term in section 101(d)(1) of title 10;

(B) includes full-time National Guard duty (as defined in section 101(d)(5) of title 10); and

(C) for a member of a reserve component (as described in section 10101 of title 10), does not include training duties or attendance at a service school.

(2) The term "agency"—

(A) has the meaning given the term "Executive agency" in section 105 of this title; and

(B) does not include the Government Accountability Office.

(3) The term "geographic area of the permanent duty station" means the area from which individuals reasonably can be expected to travel daily to and from work at the location of a member's permanent duty station.

(4) The term "permanent change of station" means the assignment, detail, or transfer of a member of the Armed Forces who is on active duty and serving at a permanent duty station under a competent authorization or order that does not—

(A) specify the duty as temporary;

(B) provide for assignment, detail, or transfer, after that different permanent duty station, to a further different permanent duty station; or

(C) direct return to the initial permanent duty station.

(5) The term "relocating spouse of a member of the Armed Forces" means an individual who—

(A) is married to a member of the Armed Forces (on or prior to a permanent change of station of the member) who is ordered to active duty for a period of more than 180 consecutive days;

(B) relocates to the member's permanent duty station; and

(C) before relocating as described in subparagraph (B), resided outside the geographic area of the permanent duty station.

(6) The term "spouse of a disabled or deceased member of the Armed Forces" means an individual—

(A) who is married to a member of the Armed Forces who—

(i) is retired, released, or discharged from the Armed Forces; and

(ii) on the date on which the member retires, is released, or is discharged, has a disability rating of 100 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs; or

(B) who—

(i) was married to a member of the Armed Forces on the date on which the member dies while on active duty in the Armed Forces; and

(ii) has not remarried.

(b) APPOINTMENT AUTHORITY.—The head of an agency may appoint noncompetitively—

(1) a relocating spouse of a member of the Armed Forces; or
(2) a spouse of a disabled or deceased member of the Armed Forces.

(c) SPECIAL RULES REGARDING RELOCATING SPOUSE.—
(1) IN GENERAL.—An appointment of a relocating spouse of a member of the Armed Forces under this section may only be to a position the duty station for which is within the geographic area of the permanent duty station of the member of the Armed Forces, unless there is no agency with a position with a duty station within the geographic area of the permanent duty station of the member of the Armed Forces.
(2) SINGLE PERMANENT APPOINTMENT PER DUTY STATION.—A relocating spouse of a member of the Armed Forces may not receive more than 1 permanent appointment under this section for each time the spouse relocates as described in subparagraphs (B) and (C) of subsection (a)(5).
(3) TIME LIMITATION.—A relocating spouse of a member of the Armed Forces may receive an appointment under this section with no time limitation for eligibility from the date of such member's permanent change of station orders.

(d) SPECIAL RULES REGARDING SPOUSE OF A DISABLED OR DECEASED MEMBER OF THE ARMED FORCES.—
(1) IN GENERAL.—An appointment of an eligible spouse as described in subparagraph (A) or (B) of subsection (a)(6) is not restricted to a geographical area.
(2) SINGLE PERMANENT APPOINTMENT.—A spouse of a disabled or deceased member of the Armed Forces may not receive more than 1 permanent appointment under this section.

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) the execution of the instrument is notarized by—

(A) a military legal assistance counsel;

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

(i) is not an attorney; and

(ii) is supervised by a military legal assistance counsel; or

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

(3) the instrument is executed in the presence of at least two disinterested witnesses (in addition to the ~~presiding attorney~~person notarizing the instrument in accordance with paragraph (2)), 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.
(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).

(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).

Section 545 would amend the provisions of Article 6b of the Uniform Code of Military Justice (UCMJ) that relate to the designation of a representative for certain victims of offenses under the UCMJ. That article currently requires that a military judge appoint an individual to assume the victim's rights in all cases under the UCMJ in which the victim of an offense is under 18 years of age (unless the victim is a member of the armed forces) or is incompetent, incapacitated, or deceased. The requirement that military judges "shall" appoint a representative provides no discretion to military judges to permit alleged victims who are minors to exercise their rights on their own or through their legal counsel.

This change would bring Article 6b(c) in line with the discretion judges have to appoint an individual to assume the victim's rights under the Crime Victims' Rights Act, 18 U.S.C. 3771. Section 3771(e) provides discretion to the presiding judge to appoint a guardian who may or may not assume the crime victim's rights of a minor, stating in the relevant section:

> "In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the victim's rights under this chapter…"

This proposal would help protect minors in those situations where they are mature enough to communicate their desires themselves or through counsel. The American Bar Association Model Rules of Professional Conduct, upon which the Service Rules are based, presume the competency of minors to exercise their rights, unless or until they demonstrate they cannot. Special Victims' Counsel (SVC) determine the competency of their clients as well as prepare representation in accordance with their clients' direction – they voice the choices of a competent client who is a minor. If the victim is able to express his or her desires personally or through counsel, a representative is unnecessary and could be harmful to the interests of the victim. This proposal would allow military judges exercising sound judgment to decide on a case-by-case basis whether it is appropriate to appoint someone to stand in the shoes of the minor or leave the minor to exercise his or her own rights, including when the minor is represented by counsel.

Budget Implications: None. This proposal is cost neutral. The Air Force does not employ or contract with "representatives" who are available to assume a victim's rights in return for compensation. There is no expenditure of monies to appoint a representative and there is no cost-saving in the decision to not appoint a representative. Funds would not be expended or saved with the enactment of the proposal, but military judges would be authorized to exercise their discretion regarding the appointment of a representative.

Changes to Existing Law: This proposal would amend section 806b(c) of title 10, United States Code (article 6b(c) of the Uniform Code of Military Justice), as follows.

§ 806b. Art. 6b. Rights of the victim of an offense under this chapter

(a) RIGHTS OF A VICTIM OF AN OFFENSE UNDER THIS CHAPTER**.—**A victim of an offense under this chapter has the following rights:

(1) The right to be reasonably protected from the accused.

(2) The right to reasonable, accurate, and timely notice of any of the following:

(A) A public hearing concerning the continuation of confinement prior to trial of the accused.

(B) A preliminary hearing under section 832 of this title (article 32) relating to the offense.

(C) A court-martial relating to the offense.

(D) A public proceeding of the service clemency and parole board relating to the offense.

(E) The release or escape of the accused, unless such notice may endanger the safety of any person.

(3) The right not to be excluded from any public hearing or proceeding described in paragraph (2) unless the military judge or investigating officer, as applicable, after receiving clear and convincing evidence, determines that testimony by the victim of an offense under this chapter would be materially altered if the victim heard other testimony at that hearing or proceeding.

(4) The right to be reasonably heard at any of the following:

(A) A public hearing concerning the continuation of confinement prior to trial of the accused.

(B) A sentencing hearing relating to the offense.

(C) A public proceeding of the service clemency and parole board relating to the offense.

(5) The reasonable right to confer with the counsel representing the Government at any proceeding described in paragraph (2).

(6) The right to receive restitution as provided in law.

(7) The right to proceedings free from unreasonable delay.

(8) The right to be treated with fairness and with respect for the dignity and privacy of the victim of an offense under this chapter.

(b) VICTIM OF AN OFFENSE UNDER THIS CHAPTER DEFINED.—In this section, the term "victim of an offense under this chapter" means an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under this chapter (the Uniform Code of Military Justice).

(c) APPOINTMENT OF INDIVIDUALS TO ASSUME RIGHTS FOR CERTAIN VICTIMS.—In the case of a victim of an offense under this chapter who is under 18 years of age (but who is not a member of the armed forces), incompetent, incapacitated, or deceased, the military judge **~~shall~~ may** designate a representative of the estate of the victim, a family member, or another suitable

individual to assume the victim's rights under this section. However, in no event may the individual so designated be the accused.

(d) RULE OF CONSTRUCTION.—Nothing in this section (article) shall be construed—

(1) to authorize a cause of action for damages; or

(2) to create, to enlarge, or to imply any duty or obligation to any victim of an offense under this chapter or other person for the breach of which the United States or any of its officers or employees could be held liable in damages.

(e) ENFORCEMENT BY COURT OF CRIMINAL APPEALS.—(1) If the victim of an offense under this chapter believes that a preliminary hearing ruling under section 832 of this title (article 32) or a court-martial ruling violates the rights of the victim afforded by a section (article) or rule specified in paragraph (4), the victim may petition the Court of Criminal Appeals for a writ of mandamus to require the preliminary hearing officer or the court-martial to comply with the section (article) or rule.

(2) If the victim of an offense under this chapter is subject to an order to submit to a deposition, notwithstanding the availability of the victim to testify at the court-martial trying the accused for the offense, the victim may petition the Court of Criminal Appeals for a writ of mandamus to quash such order.

(3) A petition for a writ of mandamus described in this subsection shall be forwarded directly to the Court of Criminal Appeals, by such means as may be prescribed by the President, and, to the extent practicable, shall have priority over all other proceedings before the court.

(4) Paragraph (1) applies with respect to the protections afforded by the following:

(A) This section (article).

(B) Section 832 (article 32) of this title.

(C) Military Rule of Evidence 412, relating to the admission of evidence regarding a victim's sexual background.

(D) Military Rule of Evidence 513, relating to the psychotherapist-patient privilege.

(E) Military Rule of Evidence 514, relating to the victim advocate-victim privilege.

(F) Military Rule of Evidence 615, relating to the exclusion of witnesses.

Section 546 would relocate the authority to reimburse members of the Armed Forces for expenses incurred in connection with leave canceled due to contingency operations from section 453 of title 37, United States Code, to title 10, United States Code, where the authority existed prior to the enactment of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113-66). Chapter 8 of title 37 concerns government-provided travel and transportation. The authority to reimburse members for expenses incurred in connection with canceled leave is unrelated to such travel and transportation allowances and more appropriately fits in chapter 40 of title 10, which concerns leave and benefits related to leave.

Budget Implications: As this proposal would only maintain the Department of Defense's (DoD) ability to pay these expenses, it would result in no added cost to the Department.

Effect of amendment to chapter 40 of title 10, United States Code (reimbursement for expenses incurred in connection with leave canceled due to contingency operations): The proposed legislation would result in no added cost to the Department because the anticipated $11,000 in annual expenditure is offset by the estimated $11,000 of removing the section from title 37, United States Code.

Effect of amendment to section 453(g) of title 37, United States Code (reimbursement for travel in connection with leave cancelled due to contingency operations): The proposed legislation would result in no added cost to the Department because the anticipated $11,000 that would be expended offsets the estimated $11,000 in expenditures under title 10, United States Code.

RESOURCE REQUIREMENTS ($MILLIONS) – 37 U.S.C. CHANGE									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	(.005)	(.005)	(.005)	(.005)	(.005)	Operation and Maintenance, Army	032	399	09- Administration and Service-wide Support
Navy	(.002)	(.002)	(.002)	(.002)	(.002)	Operation and Maintenance, Navy	032	308	09- Administration and Service-wide Support
Marine Corps	(.001)	(.001)	(.001)	(.001)	(.001)	Operation and Maintenance, Marine Corps	BA 4	4A4G	09- Administration and Service-wide Support
Air Force	(.003)	(.003)	(.003)	(.003)	(.003)	Operation and Maintenance, Air Force	Multiple	Multiple	Multiple
Total	(.011)	(.011)	(.011)	(.011)	(.011)				

RESOURCE REQUIREMENTS ($MILLIONS) – 10 U.S.C. CHANGE									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**

Army	.005	.005	.005	.005	.005	Operation and Maintenance, Army	032	399	09-Administration and Service-wide Support
Navy	.002	.002	.002	.002	.002	Operation and Maintenance, Navy	032	308	09-Administration and Service-wide Support
Marine Corps	.001	.001	.001	.001	.001	Operation and Maintenance, Marine Corps	BA 4	4A4G	09-Administration and Service-wide Support
Air Force	(003	(003	(003	(003	(003	Operation and Maintenance, Air Force	Multiple	Multiple	Multiple
Total	.011	.011	.011	.011	.011				

NUMBER OF PERSONNEL AFFECTED					
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**
Army	10	10	10	10	10
Navy	4	4	4	4	4
Marine Corps	2	2	2	2	2
Air Force	6	6	6	6	6
Total	22	22	22	22	22

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

TITLE 10, UNITED STATES CODE

§ 709a. Expenses incurred in connection with leave canceled due to contingency operations: reimbursement

(a) AUTHORIZATION TO REIMBURSE.—The Secretary concerned may reimburse a member of the armed forces under the jurisdiction of the Secretary for travel and related expenses (to the extent not otherwise reimbursable under law) incurred by the member as a result of the cancellation of previously approved leave when—

(1) the leave is canceled in connection with the member's participation in a contingency operation; and

(2) the cancellation occurs within 48 hours of the time the leave would have commenced.

(b) REGULATIONS.—The Secretary of Defense and, in the case of the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security shall prescribe regulations to establish the criteria for the applicability of subsection (a).

(c) CONCLUSIVENESS OF SETTLEMENT.—The settlement of an application for reimbursement under subsection (a) is final and conclusive.

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TITLE 37, UNITED STATES CODE

§ 453. Allowance travel and transportation: specific authorities

(a) ***

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~~(g) REIMBURSEMENT FOR TRAVEL IN CONNECTION WITH LEAVE CANCELLED DUE TO CONTINGENCY OPERATIONS.—A member may be reimbursed as specified in regulations prescribed under section 464 of this title for travel and related expenses incurred by the member as a result of the cancellation of previously approved leave when the leave is cancelled in conjunction with the member's participation in a contingency operation and the cancellation occurs within 48 hours of the time the leave would have commenced. The settlement for reimbursement under this subsection is final and conclusive.~~

Section 547 would make the Career Intermission Pilot Program (CIPP) established under section 533 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, as amended (10 U.S.C. prec. 701 note), a permanent program.

The Career Intermission Pilot Program (CIPP) was implemented initially by the Navy in May 2009, pursuant to section 533 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 10 U.S.C. 701 note). While participating in CIPP a service member receives only 1/15 month's pay annually, as well as full TRICARE and commissary benefits. Since then, each of the Services has implemented its own program to accommodate service members' pursuit of personal or professional growth outside the Service while providing a mechanism for their seamless return to active duty.

This program has been well received throughout the Services and has grown in popularity with service members. The CIPP has provided a means to enhance the retention of officers and enlisted personnel possessing critical skills, talents and leadership abilities. After six years of experience, lessons learned, and feedback from participants it is clear that changing the current statutory authority from a pilot program to a permanent authority is warranted and necessary. Permanent authority will allow further development of the program as a critical retention tool in our talent management toolkit. Each of the Services, under oversight by the Office of the Secretary of Defense, will set appropriate active duty service obligations for these programs in order to meet their retention objectives.

Budget Implications: The budget implications of this proposal include 1/15th of the participating service member's monthly basic pay; medical and dental care while in individual ready reserve during the intermission; and transportation costs for travel from the service member's residence at the time of release from active duty to his or her residence during participation in the CIP and to the member's residence upon return to active duty. The program

costs will be offset by the improved retention as a result of providing greater flexibility to the service members in managing their personal and professional lives. By allowing service members time to address shifting personal priorities that might interfere with service, this program will aid with retention of highly skilled personnel that the Services might otherwise lose to voluntary separations. This added retention will result is saving the costs to recruit, assess, and train replacement personnel. The resources reflected in the table below are funded within the FY 2017 President's Budget.

RESOURCE REQUIREMENTS ($M)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	$0.08	$0.16	$0.25	$0.25	$0.26	Military Personnel, Army	01, 02, 05	5,55 (for 01); 60,105 (for 02); 135, 140, 145 (for 05)	
Army	$0.02	$0.03	$0.05	$0.05	$0.05	Reserve Personnel, Army	01	90	
Navy	$.70	$1.44	$2.19	$2.24	$2.28	Military Personnel, Navy	01, 02, 05	5,55 (for 01); 60,105 (for 02); 135, 140, 145 (for 05)	
Navy	$0.04	$0.08	$0.12	$0.12	$0.12	Reserve Personnel, Navy	01	90	
Marine Corps	$0.03	$0.06	$0.10	$0.10	$0.10	Military Personnel, Marine Corps	01, 02, 05	5,55 (for 01); 60,105 (for 02); 135, 140, 145 (for 05)	
Air Force	$0.52	$1.07	$1.63	$1.66	$1.70	Military Personnel, Air Force	01, 02, 05	5,55 (for 01); 60,105 (for 02); 135, 140, 145 (for 05)	
Air Force	$0.06	$0.12	$0.18	$0.18	$0.19	Reserve Personnel, Air Force	01	90	
Defense Health Agency	$2.15	$4.35	$6.62	$6.72	$6.81	Defense Health Program	01	010, 020	
Total	$3.60	$7.31	$11.14	$11.32	$11.51				

Cost Methodology: Utilization rates are based on current Service projections for officer and enlisted service member participation in the CIP. For the purpose of the budget implications, the modal participants are: for officers, O-3, with over 8 years of service; and for enlisted members,

E-5, with over 10 years of service. This cost assumes all participating service members take the maximum authorized 3-year intermission.

NUMBER OF PERSONNEL AFFECTED									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation Form**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	10	20	30	30	30	Military Personnel, Army	01, 02, 05	5,55 (for 01); 60,105 (for 02); 135, 140, 145 (for 05)	
Army	2	4	6	6	6	Reserve Personnel, Army	01	90	
Navy	95	190	285	285	285	Military Personnel, Navy	01, 02, 05	5,55 (for 01); 60,105 (for 02); 135, 140, 145 (for 05)	
Navy	5	10	15	15	15	Reserve Personnel, Navy	01	90	
Marine Corps	4	8	12	12	12	Military Personnel, Marine Corps	01, 02, 05	5,55 (for 01); 60,105 (for 02); 135, 140, 145 (for 05)	
Air Force	72	144	216	216	216	Military Personnel, Air Force	01, 02, 05	5,55 (for 01); 60,105 (for 02); 135, 140, 145 (for 05)	
Air Force	8	16	24	24	24	Reserve Personnel, Air Force	01	90	
Total	196	392	588	588	588				

Changes to Existing Law: This proposal would transfer section 533 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (10 U.S.C. prec. 701 note), as amended by section 523 of the National Defense Authorization Act for Fiscal Year 2016, to title 10, United States Code, as a new section 710, with the changes shown below.

Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (10 U.S.C. prec. 701 note)

~~SEC. 533. PILOT PROGRAMS ON CAREER FLEXIBILITY TO ENHANCE RETENTION OF MEMBERS OF THE ARMED FORCES.~~

TITLE 10, UNITED STATES CODE

*** * * * * ***

CHAPTER 40—LEAVE

*** * * * * ***

§710. Career flexibility to enhance retention of members

(a) **~~PILOT~~** PROGRAMS AUTHORIZED~~.—~~

~~(1) IN GENERAL.—~~Each Secretary of a military department may carry out ~~pilot~~ programs under which ~~officers and enlisted~~ members of the regular components and members on active Guard and Reserve duty ~~and Full Time Support personnel of the reserve components~~ **of the Armed Forces** under the jurisdiction of such Secretary may be inactivated from active ~~duty~~ service in order to meet personal or professional needs and returned to active ~~duty~~ service at the end of such period of inactivation from active ~~duty~~ service.

~~(2) PURPOSE.—The purpose of the pilot programs under this section shall be to evaluate whether permitting inactivation from active duty and greater flexibility in career paths for members of the Armed Forces will provide an effective means to enhance retention of members of the Armed Forces and the capacity of the Department of Defense to respond to the personal and professional needs of individual members of the Armed Forces.~~

(b) PERIOD OF INACTIVATION FROM ACTIVE ~~DUTY~~ SERVICE; EFFECT OF INACTIVATION.—

(1) LIMITATION.—The period of inactivation from active ~~duty~~ service under a **pilot** program under this section of a member participating in the **pilot** program shall be such period as the Secretary of the military department concerned shall specify in the agreement of the member under subsection (c), except that such period may not exceed three years.

(2) EXCLUSION FROM COMPUTATION OF RESERVE OFFICER'S TOTAL YEARS OF SERVICE. —Any service by a Reserve officer while participating in a pilot program under this section shall be excluded from computation of the officer's total years of service pursuant to section 14706(a) of **this** title~~ 10, United States Code~~.

(3) RETIREMENT AND RELATED PURPOSES.—Any period of participation of a member in a pilot program under this section shall not count toward—

(A) eligibility for retirement or transfer to the Ready Reserve under either chapter 571 or 1223 of **this** title ~~10, United States Code~~; or

(B) computation of retired or retainer pay under chapter 71 or 1223 of **this** title ~~10, United States Code~~.

(c) AGREEMENT.—Each member of the ~~**Armed Forces**~~ **armed forces** who participates in a ~~**pilot**~~ program under this section shall enter into a written agreement with the Secretary of the military department concerned under which agreement that member shall agree as follows:

(1) To accept an appointment or enlist, as applicable, and serve in the Ready Reserve of the ~~**Armed Force**~~ **armed force** concerned during the period of the member's inactivation from active ~~duty~~ service under the ~~**pilot**~~ program.

(2) To undergo during the period of the inactivation of the member from active ~~duty~~ service under the ~~**pilot**~~ program such inactive duty training as the Secretary concerned shall require in order to ensure that the member retains proficiency, at a level determined by the Secretary concerned to be sufficient, in the member's military skills, professional qualifications, and physical readiness during the inactivation of the member from active ~~duty~~ service.

(3) Following completion of the period of the inactivation of the member from active ~~duty~~ service under the ~~**pilot**~~ program, to serve ~~**two months as a member of the Armed Forces**~~ ~~on~~ in active ~~duty~~ service for ~~**each month of the period of the inactivation of the member from active duty under the pilot program**~~ **a period of time (if any) specified in the agreement**.

(d) CONDITIONS OF RELEASE.—The Secretary of Defense shall ~~issue~~ **prescribe** regulations specifying the guidelines regarding the conditions of release that must be considered and addressed in the agreement required by subsection (c). At a minimum, the Secretary shall prescribe the procedures and standards to be used to instruct a member on the obligations to be assumed by the member under paragraph (2) of such subsection while the member is released from active ~~duty~~ service **and the procedures and standards to be used to determine the period of active service (if any) to be specified in the agreement under paragraph (3) of that subsection**.

(e) ORDER TO ACTIVE ~~DUTY~~ SERVICE.—Under regulations prescribed by the Secretary of the military department concerned, a member of the ~~**Armed Forces**~~ **armed forces** participating in a ~~**pilot**~~ program under this section may, in the discretion of such Secretary, be required to terminate participation in the ~~**pilot**~~ program and be ordered to active ~~duty~~ service.

(f) PAY AND ALLOWANCES.—

(1) BASIC PAY.—During each month of participation in a ~~**pilot**~~ program under this section, a member who participates in the ~~**pilot**~~ program shall be paid basic pay in an amount equal to two-thirtieths of the amount of monthly basic pay to which the member would otherwise be entitled under section 204 of title 37~~, United States Code,~~ as a member of the uniformed services on active duty in the grade and years of service of the member when the member commences participation in the ~~**pilot**~~ program.

(2) PROHIBITION ON RECEIPT OF SPECIAL AND INCENTIVE PAYS.—

(A) PROHIBITION ON RECEIPT DURING PARTICIPATION.—A member who participates in a **~~pilot~~** program shall not, while participating in the **~~pilot~~** program, be paid any special or incentive pay or bonus to which the member is otherwise entitled under an agreement under chapter 5 of title 37~~, United States Code,~~ that is in force when the member commences participation in the pilot program.

(B) TREATMENT OF REQUIRED SERVICE.—The inactivation from active ~~duty~~ service of a member participating in a **~~pilot~~** program shall not be treated as a failure of the member to perform any period of service required of the member in connection with an agreement for a special or incentive pay or bonus under chapter 5 of title 37~~, United States Code,~~ that is in force when the member commences participation in the **~~pilot~~** program.

(3) REVIVAL OF SPECIAL PAYS UPON RETURN TO ACTIVE DUTY.—

(A) REVIVAL REQUIRED.—Subject to subparagraph (B), upon the return of a member to active ~~duty~~ service after completion by the member of participation in a **~~pilot~~** program—

(i) any agreement entered into by the member under chapter 5 of title 37~~, United States Code,~~ for the payment of a special or incentive pay or bonus that was in force when the member commenced participation in the **~~pilot~~** program shall be revived, with the term of such agreement after revival being the period of the agreement remaining to run when the member commenced participation in the **~~pilot~~** program; and

(ii) any special or incentive pay or bonus shall be payable to the member in accordance with the terms of the agreement concerned for the term specified in clause (i).

(B) LIMITATIONS.—

(i) LIMITATION AT TIME OF RETURN TO ACTIVE DUTY.—Subparagraph (A) shall not apply to any special or incentive pay or bonus otherwise covered by that subparagraph with respect to a member if, at the time of the return of the member to active ~~duty~~ service as described in that subparagraph—

(I) such pay or bonus is no longer authorized by law; or

(II) the member does not satisfy eligibility criteria for such pay or bonus as in effect at the time of the return of the member to active duty.

(ii) CESSATION DURING LATER SERVICE.—Subparagraph (A) shall cease to apply to any special or incentive pay or bonus otherwise covered by that subparagraph with respect to a member if, during the term of the revived agreement of the member under subparagraph (A)(i), such pay or bonus ceases being authorized by law.

(C) REPAYMENT.—A member who is ineligible for payment of a special or incentive pay or bonus otherwise covered by this paragraph by reason of subparagraph (B)(i)(II) shall be subject to the requirements for repayment of such pay or bonus in accordance with the terms of the applicable agreement of the member under chapter 5 of title 37~~, United States Code~~.

(D) CONSTRUCTION OF REQUIRED SERVICE.—Any service required of a member under an agreement covered by this paragraph after the member returns

to active ~~duty~~ service as described in subparagraph (A) shall be in addition to any service required of the member under an agreement under subsection (c).

(4) CERTAIN TRAVEL AND TRANSPORTATION ALLOWANCES.—

(A) IN GENERAL.—Subject to subparagraph (B), a member who participates in a **~~pilot~~** program is entitled, while participating in the **~~pilot~~** program, to the travel and transportation allowances authorized by section **~~404~~ 474** of title 37~~, United States Code,~~ for—

(i) travel performed from the member's residence, at the time of release from active ~~duty~~ service to participate in the **~~pilot~~** program, to the location in the United States designated by the member as his residence during the period of participation in the **~~pilot~~** program; and

(ii) travel performed to the member's residence upon return to active ~~duty~~ service at the end of the member's participation in the **~~pilot~~** program.

(B) LIMITATION.—An allowance is payable under this paragraph only with respect to travel of a member to and from a single residence.

(5) LEAVE.—A member who participates in a **~~pilot~~** program is entitled to carry forward the leave balance existing as of the day on which the member begins participation and accumulated in accordance with section 701 of **this** title ~~10, United States Code~~, but not to exceed 60 days.

(g) PROMOTION.—

(1) OFFICERS.—

(A) LIMITATION ON PROMOTION.—An officer participating in a **~~pilot~~** program under this section shall not, while participating in the **~~pilot~~** program, be eligible for consideration for promotion under chapter 36 or 1405 of **this** title ~~10, United States Code~~.

(B) PROMOTION AND RANK UPON RETURN TO ACTIVE DUTY.—Upon the return of an officer to active ~~duty~~ service after completion by the officer of participation in a **~~pilot~~** program—

(i) the Secretary of the military department concerned shall adjust the officer's date of rank in such manner as the Secretary of Defense shall prescribe in regulations for purposes of this section; and

(ii) the officer shall be eligible for consideration for promotion when officers of the same competitive category, grade, and seniority are eligible for consideration for promotion.

(2) ENLISTED MEMBERS.—An enlisted member participating in a **~~pilot~~** program shall not be eligible for consideration for promotion during the period that—

(A) begins on the date of the member's inactivation from active ~~duty~~ service under the **~~pilot~~** program; and

(B) ends at such time after the return of the member to active ~~duty~~ service under the **~~pilot~~** program that the member is treatable as eligible for promotion by reason of time in grade and such other requirements as the Secretary of the military department concerned shall prescribe in regulations for purposes of the **~~pilot~~** program.

(h) CONTINUED ENTITLEMENTS.—A member participating in a **~~pilot~~** program under this section shall, while participating in the **~~pilot~~** program, be treated as a member of the **~~Armed Forces~~ armed forces** on active duty for a period of more than 30 days for purposes of—

(1) the entitlement of the member and the member's dependents to medical and dental care under the provisions of chapter 55 of **this** title ~~10, United States Code,~~**;** and

(2) retirement or separation for physical disability under the provisions of chapters 55 and 61 of **this** title ~~10, United States Code~~.

~~(i) REPORTS.—~~

~~(1) INTERIM REPORTS.—Not later than June 1 of 2011, 2013, 2015, 2017, 2019, and 2021, the Secretary of each military department shall submit to the congressional defense committees a report on the implementation and current status of the pilot programs conducted by such Secretary under this section.~~

~~(2) FINAL REPORT.—Not later than March 1, 2022, the Secretary of Defense shall submit to the congressional defense committees a report on the pilot programs conducted under this section.~~

~~(3) ELEMENTS OF REPORT.—Each interim report and the final report under this subsection shall include the following:~~

~~(A) A description of each pilot program conducted under this section, including a description of the number of applicants for such pilot program and the criteria used to select individuals for participation in such pilot program.~~

~~(B) An assessment by the Secretary concerned of the pilot programs, including an evaluation of whether—~~

~~(i) the authorities of the pilot programs provided an effective means to enhance the retention of members of the Armed Forces possessing critical skills, talents, and leadership abilities;~~

~~(ii) the career progression in the Armed Forces of individuals who participate in the pilot program has been or will be adversely affected; and~~

~~(iii) the usefulness of the pilot program in responding to the personal and professional needs of individual members of the Armed Forces.~~

~~(C) Such recommendations for legislative or administrative action as the Secretary concerned considers appropriate for the modification or continuation of the pilot programs.~~

~~(j) DEFINITION.—In this section, the term "active Guard and Reserve duty" has the meaning given that term in section 101(d)(6) of title 10, United States Code.~~

~~(k) DURATION OF PROGRAM AUTHORITY.—No member of the Armed Forces may be released from active duty under a pilot program conducted under this section after December 31, 2018.~~

Section 548 would establish uniform standards for Parental Leave for members of the Armed Forces. For the purposes of this policy, service members who are parents, but who are not eligible for Maternity Leave, includes only those members who are spouses of birth mothers. These members will be entitled to 14 days of Parental Leave. Adoptive parents will continue to

receive 21 days, except that in the case of dual-service couples one member will be allowed 21 days, and the other 14 days.

Parental Leave will be provided in the amount of 14 days, for every birth event. Any unused Parental Leave within one year of a child's birth will be forfeited and parents may use other existing chargeable leave methods, including passes and liberty, at the discretion of their local commands.

Budget Implications: The budget implications of the elements of this proposal are neutral.

Changes to Existing Law: This proposal (1) would add a new section 701a to title 10, United States Code, shown in full above, and (2) would make the following changes to section 701 of title 10, United States Code[, and to the Public Health Service Act]:

TITLE 10, UNITED STATES CODE

§701. Entitlement and accumulation

(a) A member of an armed force is entitled to leave at the rate of 2½ calendar days for each month of active service, excluding periods of—

(1) absence from duty without leave;
(2) absence over leave;
(3) confinement as the result of a sentence of a court-martial; and
(4) leave required to be taken under section 876a of this title.

Full-time training, or other full-time duty for a period of more than 29 days, performed under section 316, 502, 503, 504, or 505 of title 32 by a member of the Army National Guard of the United States or the Air National Guard of the United States in his status as a member of the National Guard, and for which he is entitled to pay, is active service for the purposes of this section.

(b) Except as provided in subsections (d), (f), and (g), a member may not accumulate more than 60 days' leave. However, leave taken during a fiscal year may be charged to leave accumulated during that fiscal year without regard to this limitation.

(c) A member who retired after August 9, 1946, who is continued on, or is recalled to active duty, may have his leave which accumulated during his service before retirement carried over to his period of service after retirement.

(d) Notwithstanding subsection (b), during the period beginning on October 1, 2008, through September 30, 2015, a member may accumulate up to 75 days of leave.

(e) Leave taken before discharge is considered to be active service.

(f)(1)(A) The Secretary concerned, under uniform regulations to be prescribed by the Secretary of Defense, may authorize a member described in subparagraph (B) who, except for this paragraph, would lose at the end of the fiscal year any accumulated leave in excess of the

number of days of leave authorized to be accumulated under subsection (b) or (d), to retain an accumulated total of 120 days leave.

(B) This subsection applies to a member who—

(i) serves on active duty for a continuous period of at least 120 days in an area in which the member is entitled to special pay under section 310(a) of title 37;

(ii) is assigned to a deployable ship or mobile unit or to other duty designated for the purpose of this section; or

(iii) on or after August 29, 2005, performs duty designated by the Secretary of Defense as qualifying duty for purposes of this subsection.

(C) Except as provided in paragraph (2), leave in excess of the days of leave authorized to be accumulated under subsection (b) or (d) that are accumulated under this paragraph is lost unless it is used by the member before the end of the third fiscal year (or fourth fiscal year, if accumulated while subsection (d) is in effect) after the fiscal year in which the continuous period of service referred to in subparagraph (B) terminated.

(2) Under the uniform regulations referred to in paragraph (1), a member of an armed force who serves on active duty in a duty assignment in support of a contingency operation during a fiscal year and who, except for this paragraph, would lose at the end of that fiscal year any accumulated leave in excess of the number of days of leave authorized to be accumulated under subsection (b) or (d), shall be permitted to retain such leave until the end of the second fiscal year after the fiscal year in which such service on active duty is terminated.

(g) A member who is in a missing status, as defined in section 551(2) of title 37, accumulates leave without regard to the limitations in subsections (b), (d), and (f). Notwithstanding the death of a member while in a missing status, he continues to earn leave through the date—

(1) the Secretary concerned receives evidence that the member is dead; or

(2) that his death is prescribed or determined under section 555 of title 37.

Leave accumulated while in missing status shall be accounted for separately. It may not be taken, but shall be paid for under section 501(h) of title 37. However, a member whose death is prescribed or determined under section 555 or 556 of title 37 may, in addition to leave accrued before entering a missing status, accrue not more than 150 days' leave during the period he is in a missing status, unless his actual death occurs on a date when, had he lived, he would have accrued leave in excess of 150 days, in which event settlement will be made for the number of days accrued to the actual date of death. Leave so accrued in a missing status shall be accounted for separately and paid for under the provisions of section 501 of title 37.

(h) A member who has taken leave in excess of that authorized by this section and who is being discharged or released from active duty for the purpose of accepting an appointment or a warrant in an armed force, or of entering into an enlistment or an extension of an enlistment in an armed force, may elect to have excess leave of up to 30 days or the maximum number of days of leave that could be earned in the new term of service, whichever is less, carried over to that new term of service to count against leave that will accrue on the new term of service. A member shall be required, at the time of his discharge or release from active duty, to pay for excess leave not carried over under this subsection.

(i)(1) Under regulations prescribed by the Secretary of Defense, a member of the armed forces adopting a child in a qualifying child adoption is allowed up to 21 days of leave in a calendar year to be used in connection with the adoption**, except that in the event that two members of the armed forces who are married to each other adopt a child in a qualifying child adoption, one such member shall be allowed up to 21 days of leave and the other shall be allowed up to 14 days of leave**.

(2) For the purpose of this subsection, an adoption of a child by a member is a qualifying child adoption if the member is eligible for reimbursement of qualified adoption expenses for such adoption under section 1052 of this title.

~~(3) In the event that two members of the armed forces who are married to each other adopt a child in a qualifying child adoption, only one such member shall be allowed leave under this subsection~~.

~~(4)~~ (3) Leave under paragraph (1) is in addition to other leave provided under other provisions of this section.

~~(j)(1) Under regulations prescribed by the Secretary concerned, a married member of the armed forces on active duty whose wife gives birth to a child shall receive 10 days of leave to be used in connection with the birth of the child.~~

~~(2) Leave under paragraph (1) is in addition to other leave authorized under this section.~~

(k) A member of a reserve component who accumulates leave during a period of active service may carry over any leave so accumulated to the member's next period of active service, subject to the accumulation limits in subsections (b), (d), and (f), without regard to separation or release from active service if the separation or release is under honorable conditions. The taking of leave carried over under this subsection shall be subject to the provisions of this section.

Public Health Service Act

RIGHTS, BENEFITS, PRIVILEGES, AND IMMUNITIES FOR COMMISSIONED OFFICERS OR BENEFICIARIES; EXERCISE OF AUTHORITY BY SECRETARY OR DESIGNEE

SEC. 221. **[42 U.S.C. 213a]** (a) Commissioned officers of the Service or their surviving beneficiaries are entitled to all the rights, benefits, privileges, and immunities now or hereafter provided for commissioned officers of the Army or their surviving beneficiaries under the following provisions of title 10:

(1) Section 1036, Escorts for dependents of members: transportation and travel allowances.

(2) Chapter 61, Retirement or Separation for Physical Disability, except that sections 1201, 1202, and 1203 do not apply to commissioned officers of the Public Health Service who have been ordered to active duty for training for a period of more than 30 days.

(3) Chapter 69, Retired Grade, except sections 1370, 1374,[1] 1375 and 1376(a).[1]

(4) Chapter 71, Computation of Retired Pay, except formula No. 3 of section 1401.[1]

(5) Chapter 73, Retired Serviceman's Family Protection Plan; Survivor Benefit Plan.

(6) Chapter 75, Death Benefits.

(7) Section 2771, Final settlement of accounts: deceased members.

(8) Chapter 163, Military Claims, but only when commissioned officers of the Service are entitled to military benefits under section 213 of this title.

(9) Section 2603, Acceptance of fellowships, scholarships, or grants.

(10) Section 2634, Motor vehicles: for members on permanent change of station.

(11) Section 1035, Deposits of Savings.

(12) Section 1552, Correction of military records: claims incident thereto.

(13) Section 1553, Review of discharge or dismissal.

(14) Section 1554, Review of retirement or separation without pay for physical disability.

(15) Section 1124, Cash awards for suggestions, inventions, or scientific achievements.

(16) Section 1052, Reimbursement for adoption expenses.

(17) Section 1059, Transitional compensation and commissary and exchange benefits for dependents of members separated for dependent abuse.

(18) Section 1034, Protected Communications; Prohibition of Retaliatory Personnel Actions.

(19) Section 701(i) and 701a, Adoption Leave and Parental Leave.

(b) The authority vested by title 10 in the "military departments", "the Secretary concerned", or "the Secretary of Defense" with respect to the rights, privileges, immunities, and benefits referred to in subsection (a) of this section shall be exercised, with respect to commissioned officers of the Service, by the Secretary of Health and Human Services or his designee. For purposes of paragraph (18) of subsection (a), the term "Inspector General" in section 1034 of such title 10 shall mean the Inspector General of the Department of Health and Human Services.

For the information of reviewers, section 262 of the National Oceanic and Atmospheric Administration Commissioned Officers Corps Act of 2002 (33 U.S.C. 3071) reads as follows:

SEC. 261. APPLICABILITY OF CERTAIN PROVISIONS OF TITLE 10, UNITED STATES CODE.

(a) PROVISIONS MADE APPLICABLE TO THE CORPS.—The rules of law that apply to the Armed Forces under the following provisions of title 10, as those provisions are in effect from time to time, apply also to the commissioned officer corps of the Administration:

(1) Chapter 40, relating to leave.

(2) Section 533(b), relating to constructive service.

(3) Section 716, relating to transfers between the armed forces and to and from National Oceanic and Atmospheric Administration.

(4) Section 1035, relating to deposits of savings.

(5) Section 1036, relating to transportation and travel allowances for escorts for dependents of members.

(6) Section 1052, relating to reimbursement for adoption expenses.

(7) Section 1174a, relating to special separation benefits (except that benefits under subsection (b)(2)(B) of such section are subject to the availability of appropriations for such purpose and are provided at the discretion of the Secretary of Commerce).

(8) Chapter 61, relating to retirement or separation for physical disability.

(9) Chapter 69, relating to retired grade, except sections 1370, 1375, and 1376.

(10) Chapter 71, relating to computation of retired pay.

(11) Chapter 73, relating to annuities based on retired or retainer pay.

(12) Subchapter II of chapter 75, relating to death benefits.

(13) Section 2634, relating to transportation of motor vehicles for members on permanent change of station.

(14) Sections 2731 and 2735, relating to property loss incident to service.

(15) Section 2771, relating to final settlement of accounts of deceased members.

(16) Such other provisions of subtitle A of that title as may be adopted for applicability to the commissioned officer corps of the National Oceanic and Atmospheric Administration by any other provision of law.

(b) REFERENCES.—The authority vested by title 10 in the "military departments", "the Secretary concerned", or "the Secretary of Defense" with respect to the provisions of law referred to in subsection (a) of this section shall be exercised, with respect to the commissioned officer corps of the Administration, by the Secretary of Commerce or the Secretary's designee.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Pay and Allowances

Section 601 would provide members of the uniformed services with an increase in rates of basic pay of 1.6 percent effective January 1, 2017. Military compensation is, and must, remain highly competitive to sustain the recruitment and retention of high caliber men and women into the arduous task of serving the nation in uniform. Given the continuing recovery of the nation's economy and the decrease in the unemployment rate it is necessary to increase the basic pay to maintain the quality demanded for America's all-volunteer force.

Budgetary Implications: Setting the Fiscal Year 2017 pay raise at 1.6 percent will affect all 2.1 million Active, Reserve, and National Guard Service members. The projected savings by

component across the Future Years Defense Program from the lower 1.6 percent basic pay raise (vice 2.1 percent ECI) is detailed in the table below.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	(104.5)	(137.2)	(137.9)	(140.3)	(143.1)	Military Personnel, Army	01, 02, 03		
Army Reserve	(12.7)	(17.0)	(17.3)	(17.6)	(17.9)	Reserve Personnel, Army	01		
Army National Guard	(22.8)	(30.5)	(31.0)	(31.5)	(32.2)	National Guard Personnel, Army	01		
Navy	(69.2)	(92.5)	(94.2)	(96.0)	(97.8)	Military Personnel, Navy	01, 02, 03		
Navy Reserve	(4.9)	(6.7)	(6.9)	(7.0)	(7.2)	Reserve Personnel, Navy	01		
Marine Corps	(34.1)	(45.8)	(46.5)	(47.3)	(48.3)	Military Personnel, Marine Corps	01, 02		
Marine Corps Reserve	(2.0)	(2.6)	(2.7)	(2.7)	(2.8)	Reserve Personnel, Marine Corps	01		
Air Force	(72.4)	(98.0)	(100.2)	(102.3)	(104.3)	Military Personnel, Air Force	01, 02, 03		
Air Force Reserve	(4.6)	(6.3)	(6.3)	(6.4)	(6.5)	Reserve Personnel, Air Force	01		
Air National Guard	(8.7)	(11.7)	(11.9)	(12.1)	(12.4)	National Guard Personnel, Air Force	01		
Total*	(336.0)	(448.4)	(454.9)	(463.3)	(472.5)				

*Totals may not add due to rounding

Changes to Existing Law: This proposal would make no changes to the text of existing law.

Section 602 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, or the member has granted authority to an individual to manage these funds pursuant to a valid and legally executed durable power of attorney, 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, subsection (a) of this proposal will extend until the enactment of the NDAA for FY2018 income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service. The Department of Defense and Congress recognizes the prudence of this incentive to compensate involuntary mobilized Reserve Service member an amount equal to the monthly income differential of the member's average monthly civilian income. The reserve pay authorities (sections 308b, 308c, 308d, 308g, 308h, and 308i of title 37, United States Code) previously extended in this section are now cover by section 331of title 37, United States Code, and subsection (e) of this proposal.

Subsection (b) of this proposal will extend until the enactment of the NDAA for FY2018 two critical recruitment and retention incentive programs for Reserve component health care professionals. The Reserve components historically have found it challenging to meet the required manning in the health care professions. The incentive that targets health care professionals who possess a critically short skill is essential to meet required manning levels. In addition, the health professions loan repayment program has proven to be one of our most powerful recruiting tools for attracting young health professionals trained in specialty areas that are critically short in the Selected Reserve. Extending this authority is critical to the continued success of recruiting young, skilled health professionals into the Selected Reserve.

Subsection (c) of this proposal will extend until the enactment of the NDAA for FY2018 accession and retention incentives for certain nurses, psychologists, and medical, dental and pharmacy officers. Experience shows that manning levels in these health care professional fields would be unacceptably low without these incentives, which in turn would generate substantially greater costs associated with recruiting and development of replacements. The Department of Defense and Congress have long recognized the prudence of these incentives in supporting effective personnel levels within these specialized fields. Eventually this subsection will transition to the consolidated special and incentive pay authorities in section 335 of title 37, United States Code (Special Bonus and Incentive Pay Authorities for Officers in Health Professions), to which the Department is in the process of transitioning.

Subsection (d) of this proposal will extend through the enactment of the NDAA for FY2018 accession and retention incentives for nuclear-qualified officers. These incentives enable Navy to attract and retain the qualified personnel required to maintain the operational readiness and unparalleled safety record of the nuclear-powered submarines and aircraft carriers which comprise over 40% of the Navy's major combatants. Due to extremely high training costs and regulatory requirements for experienced supervisors, these incentives provide the surest and most cost-effective means to maintain the required quantity and quality of these officers.

The nuclear officer bonus and nuclear officer incentive pay (NOIP) program is structured to provide career-long retention of officers in whom the Navy has made a considerable training investment and who have continually demonstrated superior technical and management ability. The scope of the program is limited to the number of officers required to fill critical nuclear supervisory billets and eligibility is strictly limited to those officers who continue to meet competitive career milestones. The technical, leadership, and management expertise developed in the Naval Nuclear Propulsion Program (NNPP) is highly valued in the civilian workforce, which makes the retention of these officers a continuing challenge.

Over the past few years, the NNPP observed several troubling retention indicators. The nuclear-trained surface warfare officer (SWO(N)) retention has steadily declined since 2009, with a marked decrease in the last three years. In fiscal year (FY) 2014, SWO(N) retention did not meet minimum CVN Principal Assistant (PA) requirements, and FY2015 retention is also expected to be below the minimum PA requirement. The Navy met its submarine officer retention target for FY2014 for the seventh time in ten years, but it projects it will not meet the submarine officer retention target for FY2015. The Navy believes additional measures will be required to meet the retention goal for nuclear-trained surface warfare officers. The NNPP retention challenge has contributed to Navy's current shortage of control grade officers (Captains, Commanders, and Lieutenant Commanders). The nuclear officer bonus and NOIP is the primary financial retention incentive for the highly skilled officers in these communities.

Subsection (e) of this proposal will extend through the enactment of the NDAA for FY2018 the consolidated special and incentive pay authorities added to subchapter II of chapter 5 of title 37, United States Code, by the National Defense Authorization Act for FY2008, to which the Department will transition over the next 10 years. Experience shows that retention of members in critical skills would be unacceptably low without these incentives, which in turn

would generate substantially greater costs associated with recruiting and developing replacements. The Department has implemented sections 331, 333, 334, 335, 353, and 355 with the intent of using sections 332 and 351 over the next two years. The Department of Defense and the Congress have long recognized the cost-effectiveness of financial incentives in supporting effective staffing in such critical military skills, assignments, and high priority units.

Subsection (f) of this proposal will extend through the enactment of the NDAA for FY2018 accession bonus for new officers in critical skills and officer candidates, aviation retention bonus, and enlisted conversion bonus. It will also extend incentive pay for members in designated assignments and a bonus for transfers between the Armed Forces. Enlistment and reenlistment bonuses previously extended in this section are now cover by section 331of title 37, United States Code, in subsection (e) of this proposal.

This proposal no longer extends sections 316a – Special pay: incentive pay for members of precommissioning programs pursuing foreign language proficiency, and 478a – Travel and transportation allowance: inactive duty training outside of normal commuting distances. The Department no longer uses these authorities and has transitioned the programs under them to other sections in title 37, United States Code. Incentive pay for members of precommissioning programs pursuing foreign language proficiency is authorized under section 353-Skill incentive pay or proficiency bonus. The travel and transportation allowance for inactive duty training outside of normal commuting distances is authorized under section 452 – Allowable travel and transportation: general authorities.

This proposal also allows the enlistment and reenlistment pay authorities under sections 308, 308b, 308c, 308d, 308g, 308h, 308i and 309, as well the and nuclear pay authorities sections under 312, 312b, and 312c to expire on December 31, 2016. Member receiving a bonus or incentive payments under these authorities will continue to receive payments for the length of their agreements, however, no new agreements may be offered after December 31, 2016. These pay authorities have transitioned to the consolidated pay authorities in subsection (e).

ONE-YEAR EXTENSION AUTHORITIES FOR RESERVE FORCES:

Budget Implications: This section will extend for one year critical income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service.

Table 1a.	**NUMBER OF PERSONNEL AFFECTED**							
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Navy	3	0	0	0	0	Military Personnel, Navy*	06	212
Total	3	0	0	0	0			

Table 1b.	**RESOURCE REQUIREMENTS ($ MILLIONS)**

	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Appropriation To	Budget Activity	Dash-1 Line Item
Navy	<0.1	0	0	0	0	Military Personnel, Navy*	06	212
Total	<$0.1	$0	$0	$0	$0			

***Numbers reflect FY 2017 estimate in the Services FY 2017 Overseas Contingency Operations (OCO) Budget Request.**

ONE-YEAR EXTENSION OF CERTAIN BONUS AND SPECIAL PAY AUTHORITIES FOR CERTAIN HEALTH CARE PROFESSIONALS:

Budget Implications: This section will extend for one year critical accession and retention incentive programs the military departments fund each year. The military departments already have projected expenditures for these incentives and programmed them via budget proposals. The military departments have projected expenditures of $175 to $183 million each year for FY2017 and FY2018 for these incentives in their budget proposals, to be funded from the Military Personnel accounts. Tables 2a and 2b included the numbers and funding for the pay authorities listed in subsection (b) and (c). For FY2019 and beyond, the numbers are included with the consolidated pay in Tables 4a and 4b.

Table 2a. NUMBER OF PERSONNEL AFFECTED								
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Appropriation To	Budget Activity	Line Item
Army*	1,217	1,217	0	0	0	Military Personnel, Army	01	40
Army Res*	2,566	2,752	0	0	0	Reserve Personnel, Army	01	120
Army National Guard*	764	789	0	0	0	National Guard Personnel, Army	01	90
Navy*	433	433	0	0	0	Military Personnel, Navy;	01	40
Navy Res*	1,079	1,079	0	0	0	Reserve Personnel, Navy	01	120
Air Force*	253	253	0	0	0	Military Personnel, Air Force	01	40
AF Res*	250	250	0	0	0	Reserve Personnel, Air Force	01	120
Air National Guard*	665	734	0	0	0	National Guard Personnel, Air Force	01	90
Total	7,227	7,507	0	0	0			

Table 2b. RESOURCE REQUIREMENTS ($ MILLIONS)								
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Appropriation To	Budget Activity	Line Item

Army*	$33.6	$33.6	0	0	0	Military Personnel, Army;	01	40
Army Res*	$52.7	$56.5	0	0	0	Reserve Personnel, Army	01	120
Army National Guard*	$15.28	$18.14	0	0	0	National Guard Personnel, Army	01	90
Navy*	$9.4	$9.4	0	0	0	Military Personnel, Navy;	01	40
Navy Res*	$17.6	$17.6	0	0	0	Reserve Personnel, Navy	01	120
Air Force*	$30.5	$30.5	0	0	0	Military Personnel, Air Force	01	40
AF Res*	$5.0	$5.0	0	0	0	Reserve Personnel, Air Force	01	120
Air National Guard	$10.8	$12.1	0	0	0	National Guard Personnel, Air Force	01	90
Total	$174.9	$182.8	0	0	0			

*** Numbers reflect FY2017 estimate in the Services FY2017 Budget Estimate.**

ONE-YEAR EXTENSION OF SPECIAL PAY AND BONUS AUTHORITIES FOR NUCLEAR OFFICERS:

Budget Implications: This section will extend for one year the critical accession and retention incentive programs the Navy funds each year. The Navy has already projected expenditures for these incentives and programmed them into budget proposals. The Navy has projected expenditures of about $82 million each year, to be funded from their Military Personnel account, to account for new and renegotiated contracts to be executed each year from FY 2017 through 2021. The Army and Air Force are not authorized in the statute to pay these bonuses.

Table 3a.	**NUMBER OF PERSONNEL AFFECTED**							
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Navy*	2,838	2,838	2,838	2,838	2,838	Military Personnel, Navy	01, 03	40 (for 01); 90 (for 02); 110 (for 03)
Navy Res*	158	158	158	158	158	Reserve Personnel, Navy	01	90
Total	2,996	2,996	2,996	2,996	2,996			

Table 3b.	RESOURCE REQUIREMENTS ($MILLIONS)							
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Navy*	$79.6	$79.6	$79.6	$79.6	$79.6	Military Personnel, Navy	01, 03	40 (for 01); 90 (for 02); 110 (for 03)
Navy Res*	$2.4	$2.4	$2.4	$2.4	$2.4	Reserve Personnel, Navy	01	90
Total	$82	$82	$82	$82	$82			

*** Numbers reflect FY2017 estimate in the Services FY2017 Budget Estimate.**

ONE-YEAR EXTENSION OF AUTHORITIES RELATING TO CONSOLIDATED SPECIAL PAY, INCENTIVE PAY, AND BONUS AUTHORITIES.

Budget Implications: This section will extend for one year the consolidated special and incentive programs the military departments fund each year. These pays consist of enlisted bonuses, non-physician health professions pays, and critical skill retention bonuses. This section does not include the nuclear officer pays which are located in tables 3a and 3b. The military departments already have projected expenditures for these incentives and programmed them via budget proposals. Specifically, the military departments have projected expenditures of $1.45 billion to $3.85 billion each year from FY 2017 through FY 2021 for these incentives in their budget proposals, to be funded from the Military Personnel accounts.

Table 4a.	NUMBER OF PERSONNEL AFFECTED							
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation To**	**Budget Activity**	**Line Item**
Army*	88,877	88,877	228,378	228,378	228,378	Military Personnel, Army	01, 02	35 & 40 (for 01), 85 & 90 (for 02)
ARNG*	32,422	43,640	52,812	52,641	51,885	National Guard Personnel, Army	01	90
USAR*	36,115	37,081	37,377	39,963	39,520	Reserve Personnel, Army	01	90
Navy*	52,958	52,958	288,547	288,547	288,547	Military Personnel, Navy	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
USNR*	7,116	6,762	8,071	8,218	8,218	Reserve Personnel, Navy	01	90
Marine Corps*	6,606	6,606	34,138	34,138	34,138	Military Personnel, Marine Corps	01, 02	35 & 40 (for 01); 85 & 90 (for 02)

USMCR*	461	461	461	461	461	Reserve Personnel, Marine Corps	01	90
Air Force*	41,090	41,090	134,686	134,686	134,686	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
ANG*	9,843	6,746	7,391	7,239	7,239	National Guard Personnel, Air Force	01	90
USAFR*	11,107	10,800	9,950	10,403	10,403	Reserve Personnel, Air Force	01	90
Total	286,595	295,021	801,811	804,674	803,475			

Table 4b.	**RESOURCE REQUIREMENTS ($ MILLIONS)**							
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation To**	**Budget Activity**	**Line Item**
Army*	$258.8	$258.8	$899.1	$899.1	$899.1	Military Personnel, Army	01, 02	35 & 40 (for 01), 85 & 90 (for 02)
ARNG*	$136.2	$162.9	$241.8	$239.1	$241.1	National Guard Personnel, Army	01	90
USAR*	$126.0	$129.4	$143.3	$149.2	$148.5	Reserve Personnel, Army	01	90
Navy*	$396.9	$396.9	$1,342.3	$1,342.3	$1,342.3	Military Personnel, Navy	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
USNR*	$23.8	$21.7	$38.4	$38.7	$38.7	Reserve Personnel, Navy	01	90
Marine Corps*	$76.5	$76.5	$160.6	$160.6	$160.6	Military Personnel, Marine Corps	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
USMCR*	$6.5	$6.5	$6.5	$6.5	$6.5	Reserve Personnel, Marine Corps	01	90
Air Force*	$308.5	$308.5	$915.5	$915.5	$915.5	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
ANG*	$80.1	$53.1	$58.2	$59.1	$59.1	National Guard Personnel, Air Force	01	90
USAFR*	$29.7	$28.8	$38.1	$38.6	$38.6	Reserve Personnel, Air Force	01	90
Total	$1,443	$1,443	$3,843.8	$3,848.7	$3,850			

*** Numbers reflect FY2017 estimate in the Services FY2017 Budget Estimate.**

ONE-YEAR EXTENSION OF AUTHORITIES RELATING TO PAYMENT OF OTHER TITLE 37 BONUSES AND SPECIAL PAY:

Budget Implications: This section would extend for one year critical officer recruiting and retention incentive programs the military departments fund each year. It also includes assignment incentive pay and transfer bonuses. The military departments already have projected expenditures for these incentives and programmed them via budget proposals. Specifically, the military departments have projected expenditures of approximately $203.5 million for FY 2017 and FY2018 for these incentives in their budget proposals, to be funded from the Military Personnel accounts. As of January 28, 2018, all of these authorities will transition to the consolidated pay authorities in subsection (e).

Table 5a.	**NUMBER OF PERSONNEL AFFECTED**							
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation To**	**Budget Activity**	**Line Item**
Army*	8,203	8,203	0	0	0	Military Personnel, Army	01, 02	35 & 40 (for 01), 85 & 90 (for 02)
Navy*	5,593	5,593	0	0	0	Military Personnel, Navy	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
Marine Corps*	229	229	0	0	0	Military Personnel, Marine Corps	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
Air Force*	6,415	6,415	0	0	0	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
Total	20,440	20,440						

Table 5b.	**RESOURCE REQUIREMENTS ($ MILLIONS)**							
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation To**	**Budget Activity**	**Line Item**
Army*	$50.8	$50.8	$0	$0	$0	Military Personnel, Army	01, 02	35 & 40 (for 01), 85 & 90 (for 02)
Navy*	$50.2	$50.2	$0	$0	$0	Military Personnel, Navy	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
Marine Corps*	$2.2	$2.2	$0	$0	$0	Military Personnel, Marine Corps	01, 02	35 & 40 (for 01); 85 & 90 (for 02)

Air Force*	$100.3	$100.3	$0	$0	$0	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
Total	$203.5	$203.5	$0	$0	$0			

*** Numbers reflect FY2017 estimate in the Services FY2017 Budget Estimate.**

Changes to Existing Laws: This proposal would make the following changes to title 10 and title 37, United States Code:

TITLE 10, UNITED STATES CODE

§ 2130a. Financial assistance: nurse officer candidates

(a) BONUS AUTHORIZED.—(1) A person described in subsection (b) who, during the period beginning on November 29, 1989, and ending on ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense, executes a written agreement in accordance with subsection (c) to accept an appointment as a nurse officer may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus of not more than $20,000. The bonus shall be paid in periodic installments, as determined by the Secretary concerned at the time the agreement is accepted, except that the first installment may not exceed $10,000.

(2) In addition to the accession bonus payable under paragraph (1), a person selected under such paragraph shall be entitled to a monthly stipend in an amount not to exceed the stipend rate in effect under section 2121(d) of this title for each month the individual is enrolled as a full-time student in an accredited baccalaureate degree program in nursing at a civilian educational institution by the Secretary selecting the person. The continuation bonus may be paid for not more than 24 months.

* * * * * * *

§ 16302. Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages

(d) The authority provided in this section shall apply only in the case of a person first appointed as a commissioned officer before ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense.

———

TITLE 37, UNITED STATES CODE

§ 301b. Special pay: aviation career officers extending period of active duty

(a) BONUS AUTHORIZED.—An aviation officer described in subsection (b) who, during the period beginning on January 1, 1989, and ending on ~~December 31, 2016~~the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the

Department of Defense, executes a written agreement to remain on active duty in aviation service for at least one year may, upon the acceptance of the agreement by the Secretary concerned, be paid a retention bonus as provided in this section.

* * * * * * *

§ 302c-1. Special pay: accession and retention bonuses for psychologists

(f) TERMINATION OF AUTHORITY.—No agreement under subsection (a) or (b) may be entered into after ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense.

* * * * * * *

§ 302d. Special pay: accession bonus for registered nurses

(a) ACCESSION BONUS AUTHORIZED.—(1) A person who is a registered nurse and who, during the period beginning on November 29, 1989, and ending on ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense, executes a written agreement described in subsection (c) to accept a commission as an officer and remain on active duty for a period of not less than three years may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus in an amount determined by the Secretary concerned.

(2) The amount of an accession bonus under paragraph (1) may not exceed $30,000.

* * * * * * *

§ 302e. Special pay: nurse anesthetists

(a) SPECIAL PAY AUTHORIZED.—(1) An officer described in subsection (b)(1) who, during the period beginning on November 29, 1989, and ending on ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense, executes a written agreement to remain on active duty for a period of one year or more may, upon the acceptance of the agreement by the Secretary concerned, be paid incentive special pay in an amount not to exceed $50,000 for any 12-month period.

(2) The Secretary concerned shall determine the amount of incentive special pay to be paid to an officer under paragraph (1). In determining that amount, the Secretary concerned shall consider the period of obligated service provided for in the agreement under that paragraph.

* * * * * * *

§ 302g. Special pay: Selected Reserve health care professionals in critically short wartime specialties

(e) TERMINATION OF AGREEMENT AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense.

* * * * * * *

§ 302h. Special pay: accession bonus for dental officers

(a) ACCESSION BONUS AUTHORIZED.—(1) A person who is a graduate of an accredited dental school and who, during the period beginning on September 23, 1996, and ending on ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense, executes a written agreement described in subsection (c) to accept a commission as an officer of the armed forces and remain on active duty for a period of not less than four years may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus in an amount determined by the Secretary concerned.

(2) The amount of an accession bonus under paragraph (1) may not exceed $200,000.

* * * * * * *

§ 302j. Special pay: accession bonus for pharmacy officers

(a) ACCESSION BONUS AUTHORIZED.—A person who is a graduate of an accredited pharmacy school and who, during the period beginning on October 30, 2000, and ending on ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense, executes a written agreement described in subsection (d) to accept a commission as an officer of a uniformed service and remain on active duty for a period of not less than 4 years may, upon acceptance of the agreement by the Secretary concerned, be paid an accession bonus in an amount determined by the Secretary concerned.

* * * * * * *

§ 302k. Special pay: accession bonus for medical officers in critically short wartime specialties

(f) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense.

* * * * * * *

§ 302l. Special pay: accession bonus for dental specialist officers in critically short wartime specialties

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense.

* * * * * * *

§ 307a. Special pay: assignment incentive pay

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2016~~the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense.

* * * * * * *

§ 324. Special pay: accession bonus for new officers in critical skills

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense.

* * * * * * *

§ 326. Incentive bonus: conversion to military occupational specialty to ease personnel shortage

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense.

* * * * * * *

§ 327. Incentive bonus: transfer between armed forces

(h) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense.

* * * * * * *

§ 330. Special pay: accession bonus for officer candidates

(f) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense.

* * * * * * *

§ 331. General bonus authority for enlisted members

(h) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense.

* * * * * * *

§ 332. General bonus authority for officers

(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2016~~the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense.

* * * * * * *

§ 333. Special bonus and incentive pay authorities for nuclear officers

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense.

* * * * * * *

§ 334. Special aviation incentive pay and bonus authorities for officers

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense.

* * * * * * *

§ 335. Special bonus and incentive pay authorities for officers in health professions

(k) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense.

* * * * * * *

§ 336. Contracting bonus for cadets and midshipmen enrolled in the Senior Reserve Officers' Training Corps

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense.

* * * * * * *

§ 351. Hazardous duty pay

(i) TERMINATION OF AUTHORITY.—No hazardous duty pay under this section may be paid after ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense.

* * * * * * *

§ 352. Assignment pay or special duty pay

(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense.

* * * * * * *

§ 353. Skill incentive pay or proficiency bonus

(j) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense.

* * * * * * *

§ 355. Special pay: retention incentives for members qualified in critical military skills or assigned to high priority units

(h) TERMINATION OF BONUS AUTHORITY.—No bonus may be paid under this section with respect to any reenlistment, or voluntary extension of an enlistment, in the armed forces entered into after ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense, and no agreement under this section may be entered into after that date.

* * * * * * *

§ 403. Basic allowance for housing

(b)(7)(E) An increase in the rates of basic allowance for housing for an area may not be prescribed under this paragraph or continue after ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense.

* * * * * * *

§ 910. Replacement of lost income: involuntarily mobilized reserve component members subject to extended and frequent active duty service

(g) TERMINATION.—No payment shall be made to a member under this section for months beginning after ~~December 31, 2016~~ the date of the enactment of an Act authorizing appropriations for fiscal year 2018 for military activities of the Department of Defense, unless the entitlement of the member to payments under this section is commenced on or before that date.

Section 612 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.

Section 613 would make technical and clerical corrections to titles 10, 14, 20, 24, 36, 37, and 42, United States Code, as part of the Department's transition to the "consolidated authorities" described in Section 661 of the National Defense Authorization Act for Fiscal Year 2008, which provided eight consolidated statutory special and incentive pay authorities for future use to replace those currently in use.

This proposal is consistent in format and intent with technical corrections included each year in the annual NDAA. The proposal would make no substantive change in existing law, but would correct referring citations to reflect recent developments.

Budget Implications: This proposal would not have any budgetary implications for the Department of Defense.

Changes to Existing Law: This proposal would make the following changes to existing law:

1. SECTION 586 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2008
(Public Law 110-181)

SEC. 586. [10 U.S.C. 991 note] FAMILY CARE PLANS AND DEFERMENT OF DEPLOYMENT OF SINGLE PARENT OR DUAL MILITARY COUPLES WITH MINOR DEPENDENTS.

The Secretary of Defense shall establish appropriate procedures to ensure that an adequate family care plan is in place for a member of the Armed Forces with minor dependents who is a single parent or whose spouse is also a member of the Armed Forces when the member may be deployed in an area for which imminent danger pay is authorized under section 310 **or 351** of title 37, United States Code. Such procedures should allow the member to request a

deferment of deployment due to unforeseen circumstances, and the request for such a deferment should be considered and responded to promptly.

* * * * * * *

2. TITLE 10, UNITED STATES CODE

§ 1079. Contracts for medical care for spouses and children

(a) ***

* * * * * * *

(g)(1) When a member dies while he is eligible for receipt of hostile fire pay under section 310 **or 351** 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.

* * * * * * *

§ 1218. Discharge or release from active duty: claims for compensation, pension, or hospitalization

(a) ***

* * * * * * *

(d)(1) The Secretary of a military department shall ensure that each member of a reserve component under the jurisdiction of the Secretary who is determined, after a mobilization and deployment to an area in which imminent danger pay is authorized under section 310 **or 351** of title 37, to require evaluation for a physical or mental disability which could result in separation or retirement for disability under this chapter or placement on the temporary disability retired list or inactive status list under this chapter is retained on active duty during the disability evaluation process until such time as such member is—

(A) cleared by appropriate authorities for continuation on active duty; or

(B) separated, retired, or placed on the temporary disability retired list or inactive status list.

* * * * * * *

3. SECTION 362 OF NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2007
(Public Law 109-364)

SEC. 362. [10 U.S.C. 2825 note] PROVISION OF ADEQUATE STORAGE SPACE TO SECURE PERSONAL PROPERTY OUTSIDE OF ASSIGNED MILITARY FAMILY HOUSING UNIT.

The Secretary of a military department shall ensure that a member of the Armed Forces under the jurisdiction of the Secretary who occupies a unit of military family housing is provided with adequate storage space to secure personal property that the member is unable to secure within the unit whenever—

(1) the member is assigned to duty in an area for which special pay under section 310**, or paragraph (1) or (3) of section 351(a),** of title 37, United States Code, is available and the assignment is pursuant to orders specifying an assignment of 180 days or more; and

(2) the dependents of the member who otherwise occupy the unit of military family housing are absent from the unit for more than 30 consecutive days during the period of the assignment of the member.

* * * * * * *

4. HIGHER EDUCATION ACT OF 1965

SEC. 455 [20 U.S.C. 1087e] TERMS AND CONDITIONS OF LOANS.

(a) ***

* * * * * *

(o) NO ACCRUAL OF INTEREST FOR ACTIVE DUTY SERVICE MEMBERS.—

(1) ***

* * * * * *

(3) ELIGIBLE MILITARY BORROWER.—In this subsection, the term ‘‘eligible military borrower’’ means an individual who—

(A)(i) is serving on active duty during a war or other military operation or national emergency; or (ii) is performing qualifying National Guard duty during a war or other military operation or national emergency; and

(B) is serving in an area of hostilities in which service qualifies for special pay under section 310 **or paragraph (1) or (3) of section 351(a).** of title 37, United States Code.

* * * * * *

SEC. 465. [20 U.S.C. 1087ee] CANCELLATION OF LOANS FOR CERTAIN PUBLIC SERVICE.

(a) CANCELLATION OF PERCENTAGE OF DEBT BASED ON YEARS OF QUALIFYING SERVICE.—(1) The percent specified in paragraph (3) of this subsection of the total amount of any loan made after June 30, 1972, from a student loan fund assisted under this part shall be canceled for each complete year of service after such date by the borrower under circumstances described in paragraph (2).

(2) Loans shall be canceled under paragraph (1) for service—

(A) as a full-time teacher for service in an academic year (including such a teacher employed by an educational service agency)—

(i) in a public or other nonprofit private elementary school or secondary school, which, for the purpose of this paragraph and for that year—

(I) has been determined by the Secretary (pursuant to regulations of the Secretary and after consultation with the State educational agency of the State in which the school is located) to be a school in which the number of children meeting a measure of poverty under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, exceeds 30 percent of the total number of children enrolled in such school; and

(II) is in the school district of a local educational agency which is eligible in such year for assistance pursuant to part A of title I of the Elementary and Secondary Education Act of 1965; or (ii) in one or more public, or nonprofit private, elementary schools or secondary schools or locations operated by an educational service agency that have been determined by the Secretary (pursuant to regulations of the Secretary and after consultation with the State educational agency of the State in which the educational service agency operates) to be a school or location at which the number of children taught who meet a measure of poverty under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, exceeds 30 percent of the total number of children taught at such school or location; or

(ii) in one or more public, or nonprofit private, elementary schools or secondary schools or locations operated by an educational service agency that have been determined by the Secretary (pursuant to regulations of the Secretary and after consultation with the State educational agency of the State in which the educational service agency operates) to be a school or location at which the number of children taught who meet a measure of poverty under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, exceeds 30 percent of the total number of children taught at such school or location;

(B) as a full-time staff member in a preschool program carried on under the Head Start Act, or in a prekindergarten or child care program that is licensed or regulated by the State, that is operated for a period which is comparable to a full school year in the locality if the salary of such staff member is not more than the salary of a comparable employee of the local educational agency;

(C) as a full-time special education teacher, including teachers of infants, toddlers, children, or youth with disabilities in a public or other nonprofit elementary or secondary school system, including a system administered by an educational service agency, or as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency as authorized in section 635(a)(10) of the Individuals with Disabilities Education Act;

(D) as a member of the Armed Forces of the United States, for service that qualifies for special pay under section 310 **or paragraph (1) or (3) of section 351(a)** of title 37, United States Code, as an area of hostilities;

(E) ***

* * * * * * *

5. ARMED FORCES RETIREMENT HOME ACT OF 1991

SEC. 1512. [24 U.S.C. 412] RESIDENTS OF RETIREMENT HOME.

(a) PERSONS ELIGIBLE TO BE RESIDENTS.—Except as provided in subsection (b) of this section, the following persons who served as members of the Armed Forces, at least one-half of whose service was not active commissioned service (other than as a warrant officer or limited-duty officer), are eligible to become residents of the Retirement Home:

(1) Persons who—

(A) are 60 years of age or over; and

(B) were discharged or released from service in the Armed Forces under honorable conditions after 20 or more years of active service.

(2) Persons who are determined under rules prescribed by the Chief Operating Officer to be incapable of earning a livelihood because of a service-connected disability incurred in the line of duty in the Armed Forces.

(3) Persons who—

(A) served in a war theater during a time of war declared by Congress or were eligible for hostile fire special pay under section 310 **or 351** of title 37;

(B) were discharged or released from service in the Armed Forces under honorable conditions; and

(C) are determined under rules prescribed by the Chief Operating Officer to be incapable of earning a livelihood because of injuries, disease, or disability.

(4) ***

* * * * * * *

6. TITLE 36, UNITED STATES CODE

§ 230103. Membership

An individual is eligible for membership in the corporation only if the individual served honorably as a member of the Armed Forces of the United States—

(1) in a foreign war, insurrection, or expedition in service that—

(A) has been recognized as campaign-medal service; and

(B) is governed by the authorization of the award of a campaign badge by the United States Government;

(2) on the Korean peninsula or in its territorial waters for at least 30 consecutive days, or a total of 60 days, after June 30, 1949; or

(3) in an area which entitled the individual to receive special pay for duty subject to hostile fire or imminent danger under section 310 **or 351** of title 37.

* * * * * * *

7. TITLE 37, UNITED STATES CODE

§ 212.Advancement of basic pay: members deployed in combat zone for more than one

year

(a) ELIGIBILITY; AMOUNT ADVANCED.—If a member of the armed forces is assigned to duty in an area for which special pay under section 310**, or paragraph (1) or (3) of section 351(a),** of this title is available and the assignment is pursuant to orders specifying an assignment of one year or more (or the assignment is extended beyond one year), the member may request, during the period of the assignment, the advanced payment of not more than three months of the basic pay of the member.

* * * * * * *

§ 402a. Supplemental subsistence allowance for low-income members with dependents

(a)***

* * * * * * *

(b) MEMBERS ENTITLED TO ALLOWANCE.— (1) Subject to subsection (d), a member of the armed forces with dependents is entitled to receive the supplemental subsistence allowance if the Secretary concerned determines that the member's income, together with the income of the rest of the member's household (if any), is within the highest income standard of eligibility, as then in effect under section 5(c) of the Food and Nutrition Act of 2008 (7 U.S.C. 2014(c)) and without regard to paragraph (1) of such section, for participation in the supplemental nutrition assistance program.

(2) In determining whether a member meets the eligibility criteria under paragraph (1), the Secretary concerned shall take into consideration the amount of the basic allowance for housing that the member receives under section 403 of this title or would otherwise receive under such section, in the case of a member who is not entitled to that allowance as a result of assignment to quarters of the United States or a housing facility under the jurisdiction of a uniformed service.

(3) In determining whether a member meets the eligibility criteria under paragraph (1), the Secretary concerned shall not take into consideration—

(A) the amount of the supplemental subsistence allowance that is payable under this section;

(B) the amount of any special pay that is payable to the member under section 310 **or 351** of this title, relating to duty subject to hostile fire or imminent danger; or

(C) the amount of any family separation allowance that is payable to the member under section 427 of this title.

* * * * * * *

§ 481a. Travel and transportation allowances: travel performed in connection with convalescent leave

(a) Under uniform regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel and transportation allowances for travel from his place of medical treatment in the continental United States to a place selected by him and approved by the

Secretary concerned, and return, when the Secretary concerned determines that the member is traveling in connection with authorized leave for convalescence from illness or injury incurred while the member was eligible for the receipt of hostile fire pay under section 310 **or 351** of this title.

* * * * * * *

§ 907. Enlisted members and warrant officers appointed as officers: pay and allowances stabilized

(a) ***

* * * * * * *

(d)(1) In determining the amount of the pay and allowances of a grade formerly held by an officer, the following special and incentive pays may be considered only so long as the officer continues to perform the duty that creates the entitlement to, or eligibility for, that pay and would otherwise be eligible to receive that pay in the former grade:

(A) Incentive pay for hazardous duty under section 301 of this title.

(B) Submarine duty incentive pay under section 301c of this title.

(C) Special pay for diving duty under section 304 of this title.

(D) Hardship duty pay under section 305 of this title.

(E) Career sea pay under section 305a of this title.

(F) Special pay for service as a member of a Weapons of Mass Destruction Civil Support Team under section 305b of this title.

(G) Assignment incentive pay under section 307a of this title.

(H) Special pay for duty subject to hostile fire or imminent danger under section 310 **or 351** of this title.

* * * * * * *

§ 910. Replacement of lost income: involuntarily mobilized reserve component members subject to extended and frequent active duty service

(a) ***

* * * * * * *

(b) ELIGIBILITY.—(1) A member of a reserve component is entitled to a payment under this section for any full month of active duty of the member, when the total monthly military compensation of the member is less than the average monthly civilian income of the member, while the member is on active duty under an involuntary mobilization order, following the date on which the member—

(A) completes 547 continuous days of service on active duty under an involuntary mobilization order;

(B) completes 730 cumulative days on active duty under an involuntary mobilization order during the previous 1,826 days; or

(C) is involuntarily mobilized for service on active duty for a period of 180 days or

more within 180 days after the date of the member's separation from a previous period of active duty for a period of 180 days or more.

(2) The entitlement of a member of a reserve component to a payment under this section also shall commence or, if previously commenced under paragraph (1), shall continue if the member—

(A) satisfies the required number of days on active duty specified in subparagraph (A) or (B) of paragraph (1) or was involuntarily mobilized as provided in subparagraph (C) of such paragraph; and

(B) is retained on active duty under subparagraph (A) or (B) of section 12301(h)(1) of title 10 because of an injury or illness incurred or aggravated while the member was assigned to duty in an area for which special pay under section 310**, or paragraph (1) or (3) of section 351(a),** of this title.

* * * * * * *

8. SOCIAL SECURITY ACT

(42 U.S.C. 1382a(b)(20))

EXCLUSIONS FROM INCOME FOR PURPOSE OF SUPPLEMENTAL SECURITY INCOME

SEC. 1612. [42 U.S.C. 1382a] (a) ***

* * * * * * *

(b) In determining the income of an individual (and his eligible spouse) there shall be excluded—

(1) subject to limitations (as to amount or otherwise) prescribed by the Commissioner of Social Security, if such individual is under the age of 22 and is, as determined by the Commissioner of Social Security, a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment, the earned income of such individual;

(2) ***

* * * * * * *

(19) any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit);

(20) special pay received pursuant to section 310**, or paragraph (1) or (3) of section 351(a),** of title 37;

* * * * * * *

9. HEAD START ACT

SEC. 645. [42 U.S.C. 9840] PARTICIPATION IN HEAD START PROGRAM.

(a) CRITERIA FOR ELIGIBILITY.—(1)(A) The Secretary shall by regulation prescribe eligibility for the participation of persons in Head Start programs assisted under this subchapter.

(B) Except as provided in paragraph (2), such regulation shall provide—

(i) that children from low-income families shall be eligible for participation in programs assisted under this subchapter [42 USCS §§ 9831 et seq.] if their families' incomes are below the poverty line, or if their families are eligible or, in the absence of child care, would potentially be eligible for public assistance;

(ii) that homeless children shall be deemed to be eligible for such participation;

(iii) that programs assisted under this subchapter [42 USCS §§ 9831 et seq.] may include--

(I) to a reasonable extent (but not to exceed 10 percent of participants), participation of children in the area served who would benefit from such programs but who are not eligible under clause (i) or (ii); and

(II) from the area served, an additional 35 percent of participants who are not eligible under clause (i) or (ii) and whose families have incomes below 130 percent of the poverty line, if--

(aa) the Head Start agency involved establishes and implements outreach and enrollment policies and procedures that ensure such agency is meeting the needs of children eligible under clause (i) or (ii) (or subclause (I) if the child involved has a disability) prior to meeting the needs of children eligible under this subclause; and

(bb) in prioritizing the selection of children to be served, the Head Start agency establishes criteria that provide that the agency will serve children eligible under clause (i) or (ii) prior to serving the children eligible under this subclause;

(iv) that any Head Start agency serving children eligible under clause (iii)(II) shall report annually to the Secretary information on--

(I) how such agency is meeting the needs of children eligible under clause (i) or (ii), in the area served, including local demographic data on families of children eligible under clause (i) or (ii);

(II) the outreach and enrollment policies and procedures established by the agency that ensure the agency is meeting the needs of children eligible under clause (i) or (ii) (or clause (iii)(I) if the child involved has a disability) prior to meeting the needs of children eligible under clause (iii)(II);

(III) the efforts, including outreach efforts (that are appropriate to the community involved), of such agency to be fully enrolled with children eligible under clause (i) or (ii);

(IV) the policies, procedures, and selection criteria such agency is implementing to serve eligible children, consistent with clause (iii)(II);

(V) the agency's enrollment level, and enrollment level over the fiscal year prior to the fiscal year in which the report is submitted;

(VI) the number of children served by the agency, disaggregated by whether such children are eligible under clause (i), clause (ii), clause (iii)(I), or clause (iii)(II); and

(VII) the eligibility criteria category of the children on the agency's waiting list;

(v) that a child who has been determined to meet the eligibility criteria described in

this subparagraph and who is participating in a Head Start program in a program year shall be considered to continue to meet the eligibility criteria through the end of the succeeding program year.

(C) In determining, for purposes of this paragraph, whether a child who has applied for enrollment in a Head Start program meets the eligibility criteria, an entity may consider evidence of family income during the 12 months preceding the month in which the application is submitted, or during the calendar year preceding the calendar year in which the application is submitted, whichever more accurately reflects the needs of the family at the time of application.

(2) Whenever a Head Start program is operated in a community with a population of 1,000 or less individuals and--

(A) there is no other preschool program in the community;

(B) the community is located in a medically underserved area, as designated by the Secretary pursuant to and is located in a health professional shortage area, as designated by the Secretary pursuant to section 332(a)(1) of such Act [42 USCS § 254e(a)(1)];

(C) the community is in a location which, by reason of remoteness, does not permit reasonable access to the types of services described in clauses (A) and (B); and

(D) not less than 50 percent of the families to be served in the community are eligible under the eligibility criteria established by the Secretary under paragraph (1);

the Head Start program in each such locality shall establish the criteria for eligibility, except that no child residing in such community whose family is eligible under such eligibility criteria shall, by virtue of such project's eligibility criteria, be denied an opportunity to participate in such program. During the period beginning on the date of the enactment of the Human Services Reauthorization Act [enacted Oct. 30, 1984] and ending on October 1, 1994, and unless specifically authorized in any statute of the United States enacted after such date of enactment, the Secretary may not make any change in the method, as in effect on April 25, 1984, of calculating income used to prescribe eligibility for the participation of persons in the Head Start programs assisted under this subchapter [42 USCS §§ 9831 et seq.] if such change would result in any reduction in, or exclusion from, participation of persons in any of such programs.

(3) (A) In this paragraph:

(i) The term "dependent" has the meaning given the term in paragraphs (2)(A) and (4)(A)(i) of section 401(a) of title 37, United States Code.

(ii) The terms "member" and "uniformed services" have the meanings given the terms in paragraphs (23) and (3), respectively, of section 101 of title 37, United States Code.

(B) The following amounts of pay and allowance of a member of the uniformed services shall not be considered to be income for purposes of determining the eligibility of a dependent of such member for programs funded under this subchapter:

(i) The amount of any special pay payable under section 310 **or 351** of title 37, United States Code, relating to duty subject to hostile fire or imminent danger.

* * * * * * *

10. Internal Revenue Code of 1986

SEC. 112. CERTAIN COMBAT ZONE COMPENSATION OF MEMBERS OF THE ARMED FORCES.

(a) ***

* * * * * * *

(c) DEFINITIONS.—For purposes of this section—

(1)The term "commissioned officer" does not include a commissioned warrant officer.

(2)The term "combat zone" means any area which the President of the United States by Executive Order designates, for purposes of this section or corresponding provisions of prior income tax laws, as an area in which Armed Forces of the United States are or have (after June 24, 1950) engaged in combat.

(3)Service is performed in a combat zone only if performed on or after the date designated by the President by Executive Order as the date of the commencing of combatant activities in such zone, and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in such zone; except that June 25, 1950, shall be considered the date of the commencing of combatant activities in the combat zone designated in Executive Order 10195.

(4)The term "compensation" does not include pensions and retirement pay.

(5)The term "maximum enlisted amount" means, for any month, the sum of—

(A) the highest rate of basic pay payable for such month to any enlisted member of the Armed Forces of the United States at the highest pay grade applicable to enlisted members, and

(B) in the case of an officer entitled to special pay under section 310**, or paragraph (1) or (3) of section 351(a),** of title 37, United States Code, for such month, the amount of such special pay payable to such officer for such month.

* * * * *

Section 614 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, or one or more trusts legally established under any Federal, State, or territorial law, to receive all or a portion of the amount payable under section 1478 of this title. The designation of a person or trust 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 or trust 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, or a trust for the benefit of a person other than the spouse, 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).

Section 615 would authorize the Secretary of Defense or the Secretary of Homeland Security (in the Coast Guard's case) to waive recoupment of separation pay from a regular service member who is involuntarily discharged or released from active duty if the Secretary

concerned determines that such a waiver supports the best interests of the United States and the Armed Forces, or that recoupment would be against equity and good conscience. Currently under 10 U.S.C. 1174(h), a member is required to repay any separation pay received if the member continues to serve and subsequently qualifies for retired or retainer pay under either title 10 or title 14 (Coast Guard). Providing authority for the Secretary of Defense or the Secretary of Homeland Security to waive recoupment of separation pay in certain circumstances facilitates the continuation of service for active component (AC) service members transitioning to the reserve component (RC) and preserves the investment that the Services have made in training these service members. Further, this authority to waive recoupment of separation pay removes a disincentive for a separating AC service member to join the RC upon release from active duty.

For example, the Reserve Components need experienced and pre-trained non-commission officers (NCOs) and mid-grade officers. This retention increases the Reserve Components' readiness levels as operational forces. For example, as of October 1, 2013, the Army Reserve had critical shortages totaling 6,574 officers in the O-3 (2,695 captains) and O-4 (3,879 majors) ranks. In addition, while over strength in its E-1 to E-4 ranks (overage of over 23,000 assigned), the Army Reserve has a shortage of over 16,500 NCOs in the ranks of E-5 thru E-7. Giving the Secretary of Defense authority to waive recoupment of separation pay will eliminate a potential barrier to recruiting and retaining mid-career service members (service members who have 6 or more years of service) who aspire to complete their military careers in the reserve component and that will help to address critical shortages in the Reserve Components.

The current law impedes the Reserve Components' ability to recruit and retain qualified personnel who are separating from Active Duty. As the economy improves and Services compete to meet the end strength needs to accomplish given missions, eliminating this "repay" requirement is one means to remove a barrier to the continuum of service and increase the readiness of the Reserve Components by retaining the knowledge and skills of separating service members.

Involuntary separation pay in its current incarnation was first intended as a contingency payment for an officer (later expanded to enlisted service members) who is career-committed but to whom a full military career may be denied. It was designed to encourage pursuit of a Service career, knowing that if the individual is denied a full career under the competitive system, the member can count on an adequate readjustment pay to ease reentry into civilian life.

Current Reserve Component compensation models for the Selected Reserve, in most cases, necessitate total reentry into the civilian life to include civilian employment. When the expansion of involuntary separation pay to enlisted personnel was debated in 1990, the SASC committee report stated, "The committee believes these [proposed separation pay] provisions provide a safety net to personnel who had planned on a career in the military but who may be required to leave active duty before they become eligible to retire." The view that involuntary separation pay is compensation for loss of eligibility for the deferred retired benefit is the basis on which separation pay is recouped from retirement pay recipients. However, this recoupment transforms involuntary separation pay from a payment intended to ease reentry into civilian life into an interest-free loan for the subset of personnel who complete their military career in the Reserve force.

The Reserve Components possess unique skill sets, maintaining key support capabilities, such as logistics, transportation, engineer and civil affairs—as well as intelligence and medical assets. In order to maintain our operational proficiency and personnel readiness, it is vital to remove any disincentive for Active Component Service members (with their vast war time experience, training, and readiness) to continue their service in the reserve components.

Budget Implications: The cost of the proposal to eliminate the recoupment of involuntary separation pay for those Regular service members receiving it after October 1, 2014 and prior to October 1, 2019 is zero as the Department of Defense is currently paying out involuntary separation pay without any expectation of recoupment. This proposal will not add more costs to the current program in place regarding Involuntary Separation Pay. This proposal will eliminate future recoupment of involuntary separation pay for Regular service members that continue to serve in the Reserve Component and earn a non-regular retirement.

It is a "Sunk Cost" in the fact that eligible service members who are involuntarily separated are given the pay regardless of whether or not the service member continues to serve in the Reserve Component. Therefore, for separated service members that never again serve, there will be no recoupment while those that decide to continue to serve the nation must pay recoupment.

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				
Air Force	0	0	0	0	0				
The Navy and Marine Corps do not intend to use this authority.									
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	265	265	265	265	265				
Air Force	75	25	25	25	25				
The Navy and Marine Corps. do not intend to use this authority.									
Total	340	290	290	290	290				

Back up Data: Calculation of Army Separation Costs and Lost Treasury Recoupment

Separation Payments	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FYDP
Personnel Expected to be affected*	265	265	265	265	265	1,325
Average Separation $ per Soldier	$ 38,480	$ 39,038	$ 39,624	$ 40,309	$ 41,188	
Total Separation $ Paid	$ 10,197,200	$ 10,345,059	$ 10,500,235	$ 10,681,889	$ 10,914,755	$ 52,639,139
Total Separation $M	**$ 10.20**	**$ 10.35**	**$ 10.50**	**$ 10.68**	**$ 10.91**	**$ 52.64**

Lost Recoupment Opportunity	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FYDP
Personnel Expected to Retire*	30	30	30	30	30	150
Average Separation $ per Soldier	$ 38,480	$ 39,038	$ 39,624	$ 40,309	$ 41,188	
Total Separation $ Not Recouped	$ 1,154,400	$ 1,171,139	$ 1,188,706	$ 1,209,270	$ 1,235,633	$ 5,959,148
Total Separation $M	**$ 1.15**	**$ 1.17**	**$ 1.19**	**$ 1.21**	**$ 1.24**	**$ 5.96**

Back up Data: Calculation of Air Force Separation Costs and Lost Treasury Recoupment

Separation Payments	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FYDP
Personnel Expected to be affected	75	25	25	25	25	175
Average Separation $ per Airmen	38,480	39,038	39,624	40,309	41,188	
Total Separation $ Paid	$ 2,886,000	$ 975,950	$ 990,600	$ 1,007,725	$ 1,029,700	$ 6,889,975
Total Separation $M	**$ 2.90**	**$ 0.98**	**$ 0.99**	**$ 1.01**	**$ 1.02**	**$ 6.90**

Lost Recoupment Opportunity	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FYDP
Personnel Expected to Retire	20	10	10	10	10	60
Average Separation $ per Airmen	38,480	39,038	39,624	40,309	41,188	
Total Separation $ Not Recouped	$ 769,600	$ 390,380	$ 396,240	$ 403,090	$ 411,880	$ 2,371,190
Total Separation $M	**$ 0.77**	**$ 0.39**	**$ 0.40**	**$ 0.40**	**$ 0.41**	**$ 2.37**

* Please note that the U.S. Treasury could lose the opportunity to recoup $5.96 million assuming that the affected personnel will all receive involuntary separation pay, continue to serve, and earn a 20-year Reserve Component retirement. However, the recoupment does not occur until the service member starts to receive retirement pay at the age of 60 (which would be around 30 years after the receipt of the involuntary separation pay). This loss opportunity is mitigated by the following facts: (1) the program will only be implemented at the discretion of the Secretary of Defense; (2) taxes are paid on it by the service member at the time of the receipt of involuntary separation pay ($5.96 million would be reduced by approximately 25 percent as taxes are withheld); (3) the future value of this loss opportunity would be approximately $2.3 million (based on 3 percent inflation rate, zero percent return/interest paid by the member, and a time span of 30 years).

Changes to Existing Law: This proposal would make the following change to section 1174 of title 10, United States Code:

§1174. Separation pay upon involuntary discharge or release from active duty

(a) REGULAR OFFICERS.—(1) A regular officer who is discharged under chapter 36 of this title (except under section 630(1)(A) or 643 of such chapter) or under section 580 or 6383 of this

title and who has completed six or more, but less than twenty, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d)(1).

(2) A regular commissioned officer of the Army, Navy, Air Force, or Marine Corps who is discharged under section 630(1)(A), 643, or 1186 of this title, and a regular warrant officer of the Army, Navy, Air Force, or Marine Corps who is separated under section 1165 or 1166 of this title, who has completed six or more, but less than twenty, years of active service immediately before that discharge or separation is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary of the military department concerned, unless the Secretary concerned determines that the conditions under which the officer is discharged or separated do not warrant payment of such pay.

(3) Notwithstanding paragraphs (1) and (2), an officer discharged under any provision of chapter 36 of this title for twice failing of selection for promotion to the next higher grade is not entitled to separation pay under this section if either (or both) of those failures of selection for promotion was by the action of a selection board to which the officer submitted a request in writing not to be selected for promotion or who otherwise directly caused his nonselection through written communication to the Board under section 614(b) of this title.

(4) Notwithstanding paragraphs (1) and (2), an officer who is subject to discharge under any provision of chapter 36 of this title or under section 580 or 6383 of this title by reason of having twice failed of selection for promotion to the next higher grade is not entitled to separation pay under this section if that officer, after such second failure of selection for promotion, is selected for, and declines, continuation on active duty for a period that is equal to or more than the amount of service required to qualify the officer for retirement.

(b) REGULAR ENLISTED MEMBERS.—(1) A regular enlisted member of an armed force who is discharged involuntarily or as the result of the denial of the reenlistment of the member and who has completed six or more, but less than 20, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d) unless the Secretary concerned determines that the conditions under which the member is discharged do not warrant payment of such pay.

(2) Separation pay of an enlisted member shall be computed under paragraph (1) of subsection (d), except that such pay shall be computed under paragraph (2) of such subsection in the case of a member who is discharged under criteria prescribed by the Secretary of Defense.

(c) OTHER MEMBERS.—(1) Except as provided in paragraphs (2) and (3), a member of an armed force other than a regular member who is discharged or released from active duty and who has completed six or more, but fewer than 20, years of active service immediately before that discharge or release is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary concerned, if—

(A) the member's discharge or release from active duty is involuntary; or

(B) the member was not accepted for an additional tour of active duty for which he volunteered.

(2) If the Secretary concerned determines that the conditions under which a member described in paragraph (1) is discharged or separated do not warrant separation pay under this section, that member is not entitled to that pay.

(3) A member described in paragraph (1) who was not on the active-duty list when discharged or separated is not entitled to separation pay under this section unless such member

had completed at least six years of continuous active duty immediately before such discharge or release. For purposes of this paragraph, a period of active duty is continuous if it is not interrupted by a break in service of more than 30 days.

(4) In the case of an officer who is subject to discharge or release from active duty under a law or regulation requiring that an officer who has failed of selection for promotion to the next higher grade for the second time be discharged or released from active duty and who, after such second failure of selection for promotion, is selected for, and declines, continuation on active duty—

(A) if the period of time for which the officer was selected for continuation on active duty is less than the amount of service that would be required to qualify the officer for retirement, the officer's discharge or release from active duty shall be considered to be involuntary for purposes of paragraph (1)(A); and

(B) if the period of time for which the officer was selected for continuation on active duty is equal to or more than the amount of service that would be required to qualify the officer for retirement, the officer's discharge or release from active duty shall not be considered to be involuntary for the purposes of paragraph (1)(A).

(d) AMOUNT OF SEPARATION PAY.—The amount of separation pay which may be paid to a member under this section is—

(1) 10 percent of the product of (A) his years of active service, and (B) 12 times the monthly basic pay to which he was entitled at the time of his discharge or release from active duty; or

(2) one-half of the amount computed under clause (1).

(e) REQUIREMENT FOR SERVICE IN READY RESERVE; EXCEPTIONS TO ELIGIBILITY.—(1)(A) As a condition of receiving separation pay under this section, a person otherwise eligible for that pay shall be required to enter into a written agreement with the Secretary concerned to serve in the Ready Reserve of a reserve component for a period of not less than three years following the person's discharge or release from active duty. If the person has a service obligation under section 651 of this title or under any other provision of law that is not completed at the time the person is discharged or released from active duty, the three-year obligation under this subsection shall begin on the day after the date on which the person completes the person's obligation under such section or other provision of law.

(B) Each person who enters into an agreement referred to in subparagraph (A) who is not already a Reserve of an armed force and who is qualified shall, upon such person's discharge or release from active duty, be enlisted or appointed, as appropriate, as a Reserve and be transferred to a reserve component.

(2) A member who is discharged or released from active duty is not eligible for separation pay under this section if the member-

(A) is discharged or released from active duty at his request;

(B) is discharged or released from active duty during an initial term of enlistment or an initial period of obligated service, unless the member is an officer discharged or released under the authority of section 647 of this title;

(C) is released from active duty for training; or

(D) upon discharge or release from active duty, is immediately eligible for retired or retainer pay based on his military service.

(f) COUNTING FRACTIONAL YEARS OF SERVICE.—In determining a member's years of active service for the purpose of computing separation pay under this section, each full month of service that is in addition to the number of full years of service creditable to the member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(g) COORDINATION WITH OTHER SEPARATION OR SEVERANCE PAY BENEFITS.—A period for which a member has previously received separation pay under this section or severance pay or readjustment pay under any other provision of law based on service in the armed forces may not be included in determining the years of service that may be counted in computing the separation pay of the member under this section.

(h) COORDINATION WITH RETIRED OR RETAINER PAY AND DISABILITY COMPENSATION.—(1) A member who has received separation pay under this section, or separation pay, severance pay, or readjustment pay under any other provision of law, based on service in the armed forces, and who later qualifies for retired or retainer pay under this title or title 14 shall have deducted from each payment of such retired or retainer pay an amount, in such schedule of monthly installments as the Secretary of Defense shall specify, taking into account the financial ability of the member to pay and avoiding the imposition of undue financial hardship on the member and member's dependents, until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay so paid.

(2) A member who has received separation pay under this section, or severance pay or readjustment pay under any other provision of law, based on service in the armed forces shall not be deprived, by reason of his receipt of such separation pay, severance pay, or readjustment pay, of any disability compensation to which he is entitled under the laws administered by the Department of Veterans Affairs, but there shall be deducted from that disability compensation an amount equal to the total amount of separation pay, severance pay, and readjustment pay received, less the amount of Federal income tax withheld from such pay (such withholding being at the flat withholding rate for Federal income tax withholding, as in effect pursuant to regulations prescribed under chapter 24 of the Internal Revenue Code of 1986). Notwithstanding the preceding sentence, no deduction may be made from disability compensation for the amount of any separation pay, severance pay, or readjustment pay received because of an earlier discharge or release from a period of active duty if the disability which is the basis for that disability compensation was incurred or aggravated during a later period of active duty.

(3) The Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in Navy, may waive the requirement to repay separation or severance pay under paragraph (1) if such Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(i) SPECIAL RULE FOR MEMBERS RECEIVING SOLE SURVIVORSHIP DISCHARGE.—(1) A member of the armed forces who receives a sole survivorship discharge shall be entitled to separation pay under this section even though the member has completed less than six years of active service immediately before that discharge. Subsection (e) shall not apply to a member who receives a sole survivorship discharge.

(2) The amount of the separation pay to be paid to a member pursuant to this subsection shall be based on the years of active service actually completed by the member before the member's sole survivorship discharge.

(3) In this subsection, the term “sole survivorship discharge” means the separation of a member from the armed forces, at the request of the member, pursuant to the Department of Defense policy permitting the early separation of a member who is the only surviving child in a family in which-

(A) the father or mother or one or more siblings-

(i) served in the armed forces; and

(ii) was killed, died as a result of wounds, accident, or disease, is in a captured or missing in action status, or is permanently 100 percent disabled or hospitalized on a continuing basis (and is not employed gainfully because of the disability or hospitalization); and

(B) the death, status, or disability did not result from the intentional misconduct or willful neglect of the parent or sibling and was not incurred during a period of unauthorized absence.

(j) REGULATIONS; CREDITING OF OTHER COMMISSIONED SERVICE.—(1) The Secretary of Defense shall prescribe regulations, which shall be uniform for the Army, Navy, Air Force, and Marine Corps, for the administration of this section.

(2) Active commissioned service in the National Oceanic and Atmospheric Administration or the Public Health Service shall be credited as active service in the armed forces for the purposes of this section.

Section 616 would amend section 334(c)(1) of title 37, United States Code, to increase the statutory limits for the aviation incentive pay and retention bonus and allow the Department the flexibility to increase the aviation incentive pay limit set forth in regulations issued by the Secretary of Defense under section 374 of title 37. This would position the Department to quickly effect a change in the aviation incentive pays should the Services demonstrate a need for an increase to positively affect retention.

Section 334(c)(1) currently allows the Secretaries of the military departments to offer a maximum of $850 in monthly incentive pay to all aviators, with the exception of remotely piloted aircraft (RPA) pilots (who are capped at $1,000). Section 334(c)(1) also allows $25,000 to be paid to all aviators with the exception of RPA pilots, who are capped at $35,000, for each 12-month period of obligated service. This proposal would increase the cap amount for the monthly incentive to $1,000 for all aviators and the retention bonus to $35,000 per year based on recent RAND analysis and external factors that are projected to continue to negatively affect the Air Force’s rated officer inventory. This would counter an improving economy, stabilize future rated inventories, and reduce Undergraduate Flying Training (UFT) costs needed to replace lost experience.

The airline industry is exiting a decade of consolidation and restructuring and is in a position for greater stability in the foreseeable future. This stability, new Congressional mandates (minimum hours, mandatory retirement age, and greater work/rest rules), and global hiring may exert a significant pull on military pilots as reorganized airlines start to increase

compensation packages. Private industry hiring forecasts are expected to exceed pre-September 2001 levels. Three independent industry analysts have confirmed the forecasted hiring of 50,000 pilots by the airlines over the next ten years. The forecasted hiring has begun. Future and Active Pilot Advisors (http://fapa.aero/hiringhistorymonth.asp) reflects airline hiring at ~1,000 in calendar year (CY) 2013 and with a projected increase to ~3,000 hires in CY 2014. The Air Force recently confirmed via Airlines for America (A4A) that major airline hiring is above 3,000 in CY 2014 and projected to be higher in future years. A4A has a 75-year history and collaboratively works with airlines, labor, Congress and the Administration, and other groups to improve air travel for everyone. Additionally, the total airline career income and benefit packages are lucrative in light of their first-year pay scales. As the economy improves and airlines increase pay, it is critical that the Department have the ability to retain needed aviator inventory to maintain mission readiness.

These emerging factors will make it difficult to retain pilots under the current pay caps. According to a recent RAND study, over the next 20 years the commercial airline industry will be hiring pilots in increasing numbers to replace its aging pilot workforce. Furthermore, as the commercial airlines expand and the economy grows, it is imperative for the Air Force to anticipate potential changes in pilot retention and be able to allocate the appropriate resources in a timely manner to ensure the inventory of rated aviators is maintained at required manning levels. Any delay in the allocation of resources could have a detrimental impact on the aviation community. Therefore, it is essential to increase the aviation incentive pay and aviation bonus caps now to ensure the Air Force meets future aviation manning requirements.

As part of the study, RAND explored possible future changes in demand for pilots in the civilian sector, analyzed civilian pay opportunities for military pilots, and developed a Dynamic Retention Model (DRM). This model estimates both how Air Force pilot retention changes in response to civilian pilot demand and what influence special and incentive pays have on an officer's decision to stay. Specifically, RAND simulated the steady state retention effects of a 2- through 8-percent across-the-board increase in civilian pilot pay. The results from the model reveal that a relatively small change in civilian opportunities leads to significant changes in Air Force pilot retention. According to the DRM, a 2-percent increase in civilian aviation pay equates to an increase in the retention bonus of 14 to 33 percent. In other words, to maintain aviation retention when there is an increase of 2 percent in civilian aviation pay, the retention bonus would need to be increased by an additional $3,500 to $8,300 per year. If the increase in real pay is higher (i.e., 8 percent), the increase in retention incentives must be even higher. RAND and the Services feel a 2-percent assumption is reasonable and likely because airline salaries have already returned to pre 9-11 levels, and the airlines are reporting record yearly profits. The alternative would be to increase basic pay for all members, which is contrary to the reason the Department uses special and incentive pays (i.e., to selectively and narrowly target additional pay to specific groups and address specific force manning challenges). RAND's increased retention bonus logic and justification also applies to aviation incentive pay.

Additionally, the DRM model provides the Air Force a capability to consider the rated retention effects of other compensation scenarios and justifies current special and incentive pays and changes in those pays. RAND has simulated the retention effects of cutting monthly aviation incentive pay for rated personnel assigned to non-flying positions. These rated

personnel are typically mid-career or senior personnel filling key rated staff billets at the joint, Office of the Secretary of Defense (OSD), and Headquarters Air Force (HAF)/Major Command (MAJCOM) levels. RAND's analysis reveals that eliminating aviation incentive pay for rated personnel assigned to non-flying positions has a similar pilot retention decline that resulted from a 1.4 to 1.5 percent increase in civilian aviation pay.

The maximum amount of aviation incentive pay was last increased to $850 in 2008. Since 2008, the incentive values of the career pay and retention bonus have eroded, degrading their ability to positively influence aviator recruiting and retention behavior. For this reason the Department is seeking to adjust the maximum payment for the incentive pay to $1,000 per month and $35,000 per year for the aviation retention bonus. The increase in the aviation incentive pay amount would allow aviators to receive an incentive pay equal to other skill incentive pays provided in section 353 of title 37. Similarly applying insight from the RAND study demonstrates the need to increase the retention bonus from $25,000 to $35,000. RAND also specifies that if the increase in real pay is higher, the increase in the retention bonus must also be higher to offset retention effects. In light of recent increases in pilot salaries, which are consistent with a re-stabilization of the airlines and with recent pilot pay contracts, an authority limit of $35,000 would provide the Services conservative flexibility should the airline pay increase trend continue. An increase in these particular incentive pays would provide the Department the necessary flexibility to respond quickly to current and unexpected retention concerns within the Services' rated force.

In summary, the economy is improving and airline hiring is increasing (from approximately 1,000 hires in CY 2013 to approximately 3,000 hires in CY 2014). Additionally, airline salaries have returned to pre 9-11 values and are expected to increase with the growing demand for air transportation as a result of the improving economy. Postponing action would severely dampen the Services' ability to recruit and retain aviators. As the economy improves and airlines increase pay, it is critical that the Department have the flexibility to retain needed aviator inventory to maintain mission readiness.

Section 317(e) of the National Defense Authorization Act for Fiscal Year (FY) 2016 requires the Secretary of Defense to submit a report to the congressional defense committees "setting forth the empirical case for an increase in special and incentive pay for aviation officers in order to address a specific, statistically-based retention problem with respect to such officers". The report must include "the results of a study, conducted by the Secretary in connection with the case, on market-based compensation approach to the retention of such officers that considers the pay and allowances offered by commercial airlines to pilots and the propensity of pilots to leave the Air Force to become commercial airline pilots". This report is due by February 1, 2016. The Air Force has commissioned RAND to conduct the study and provide the final analysis requested. That analysis will be used as additional justification for the Department's proposed modification to section 334(c)(1).

Budget Implications: The Department believes this proposal to be budget neutral. Although the rates are increasing, the number of eligible officers for the pays is decreasing. Previously, all aviators received aviation career incentive pay for the first 12 years of their aviation career as an entitlement. Under the consolidated authority of section 334 of title 37, U.S. Code, aviation

incentive pay is a "may pay" and fewer aviators may qualify for the incentive for shorter periods of time. Therefore, the Services may use these savings to offset any increases due to raising the incentive pay and retention bonus amounts.

The budget table details Air Force resource requirements associated with this proposal based on a projected increase in authority for aviation special pays. The Air Force estimates it will immediately need to restructure the yearly aviation incentives bonus to preserve up to 130 Fighter pilots each year for an additional $1.3 million per year. The $1.3 million consists of 130 Fighter pilots times an additional $10,000 per pilot. Funding for this assumption will first be sourced through program contract length and up-front amount restructuring to fit the need of the Services and, if needed, internal programing actions within the Special and Incentive Pay budget.

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**
USN	$0.23	$0.45	$0.68	$0.90	$1.13	Military Personnel, Navy	01	035	
Navy Reserve 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: Military Personnel, Marine Corps.									
Marine Corps Reserve does not intend to use this authority, which would have been funded in the following account: Reserve Personnel, Marine Corps.									
USAF	$1.3	$2.6	$3.9	$5.2	$6.5	Military Personnel, Air Force	01	035	
ANG	$0.6	$1.2	$1.8	$2.4	$3.0	National Guard Personnel, Air Force	01	090	
USAFR	$0.1	$0.2	$0.3	$0.4	$0.5	Reserve Personnel, Air Force	01	090	
Army does not intend to use this authority, which would have been funded in the following accounts: Military Personnel, Army; Reserve Personnel, Army; and National Guard Personnel, Army.									
Total	2.23	4.45	6.68	8.90	11.13				

NUMBER OF PERSONNEL AFFECTED								
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
USN	75	150	225	300	375	Military Personnel, Navy	01	035
Navy Reserve 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: Military Personnel, Marine Corps.								
Marine Corps Reserve does not intend to use this authority, which would have been funded in the following account: Reserve Personnel, Marine Corps.								
USAF	130	130	130	130	130	Military Personnel, Air Force	01	035
ANG	60	60	60	60	60	National Guard Personnel, Air Force	01	090
USAFR	10	10	10	10	10	Reserve Personnel, Air Force	01	090
Army does not intend to use this authority, which would have been funded in the following accounts: Military Personnel, Army; Reserve Personnel, Army; and National Guard Personnel, Army.								
Total	275	350	425	500	575			

Changes to Existing Law: This section would make the following changes to section 334 of title 37, United States Code:

§ 334. Special aviation incentive pay and bonus authorities for officers

(a) AVIATION INCENTIVE PAY.—

(1) INCENTIVE PAY AUTHORIZED.—The Secretary concerned may pay aviation incentive pay under this section to an officer in a regular or reserve component of a uniformed service who—

(A) is entitled to basic pay under section 204 of this title or compensation under section 206 of this title;

(B) maintains, or is in training leading to, an aeronautical rating or designation that qualifies the officer to engage in operational flying duty or proficiency flying duty;

(C) engages in, or is in training leading to, frequent and regular performance of operational flying duty or proficiency flying duty;

(D) engages in or remains in aviation service for a specified period; and

(E) meets such other criteria as the Secretary concerned determines appropriate.

(2) OFFICERS NOT CURRENTLY ENGAGED IN FLYING DUTY.—The Secretary concerned may pay aviation incentive pay under this section to an officer who is otherwise qualified for such pay but who is not currently engaged in the performance of operational flying duty or proficiency flying duty if the Secretary determines, under regulations prescribed under section 374 of this title, that payment of aviation incentive pay to that officer is in the best interests of the service.

(b) AVIATION BONUS.—The Secretary concerned may pay an aviation bonus under this section to an officer in a regular or reserve component of a uniformed service who-

(1) is entitled to aviation incentive pay under subsection (a);

(2) has completed any active duty service commitment incurred for undergraduate aviator training or is within one year of completing such commitment;

(3) executes a written agreement to remain on active duty in a regular component or to serve in an active status in a reserve component in aviation service for at least one year; and

(4) meets such other criteria as the Secretary concerned determines appropriate.

(c) MAXIMUM AMOUNT AND METHOD OF PAYMENT.—

(1) MAXIMUM AMOUNT.—The Secretary concerned shall determine the amount of a bonus or incentive pay to be paid under this section, except that—

(A) aviation incentive pay under subsection (a) shall be paid at a monthly rate, ~~not to exceed—~~

~~(i) $1,000 per month for officers performing qualifying flying duty relating to remotely piloted aircraft (RPA); or~~

~~(ii) $850 per month for officers performing other qualifying flying duty; and~~

not to exceed $1,000 per month; and

(B) an aviation bonus under subsection (b) ~~may not exceed, for each 12-month period of obligated service agreed to under subsection (d)—~~

~~(i) $35,000 for officers performing qualifying flying duty relating to remotely piloted aircraft; or~~

~~(ii) $25,000 for officers performing other qualifying flying duty.~~

may not exceed $35,000 for each 12-month period of obligated service agreed to under subsection (d).

(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.

(d) WRITTEN AGREEMENT FOR BONUS.—To receive an aviation officer bonus under this section, an officer determined to be eligible for the bonus shall enter into a written agreement with the Secretary concerned that specifies—

(1) the amount of the bonus;

(2) the method of payment of the bonus under subsection (c)(2);

(3) the period of obligated service; and

(4) the type or conditions of the service.

(e) RESERVE COMPONENT OFFICERS PERFORMING INACTIVE DUTY TRAINING.—A reserve component officer who is entitled to compensation under section 206 of this title and who is authorized aviation incentive pay under this section may be paid an amount of incentive pay that is proportionate to the compensation received under section 206 for inactive-duty training.

(f) RELATIONSHIP TO OTHER PAY AND ALLOWANCES.—

(1) AVIATION INCENTIVE PAY.—Aviation incentive pay paid to an officer under subsection (a) shall be in addition to any other pay and allowance to which the officer is entitled, except that an officer may not receive a payment under such subsection and section 351(a)(2) or 353(a) of this title for the same skill and period of service.

(2) AVIATION BONUS.—An aviation bonus paid to an officer under subsection (b) shall be in addition to any other pay and allowance to which the officer is entitled, except that an officer may not receive a bonus payment under such subsection and section 332 or 353(b) of this title for the same skill and period of service.

(g) REPAYMENT.—An officer who receives aviation incentive pay or an aviation bonus under this section and who fails to fulfill the eligibility requirements for the receipt of the incentive pay or bonus or complete the period of service for which the incentive pay or bonus is paid, as specified in the written agreement under subsection (d) in the case of a bonus, shall be subject to the repayment provisions of section 373 of this title.

(h) DEFINITIONS.—In this section:

(1) The term "aviation service" means service performed by an officer in a regular or reserve component while holding an aeronautical rating or designation or while in training to receive an aeronautical rating or designation.

(2) The term "operational flying duty" means flying performed under competent orders by rated or designated regular or reserve component officers while serving in assignments in which basic flying skills normally are maintained in the performance of assigned duties as determined by the Secretary concerned, and flying performed by members in training that leads to the award of an aeronautical rating or designation.

(3) The term "proficiency flying duty" means flying performed under competent orders by rated or designated regular or reserve component officers while serving in assignments in which such skills would normally not be maintained in the performance of assigned duties.

(4) The term "officer" includes an individual enlisted and designated as an aviation cadet under section 6911 of title 10.

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after December 31, 2016.

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. **DoD top priority.** 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

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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.

Subtitle D—Survivor Benefits

Section 631 and **Section 632**. Section 631 would correct the inequity between Reserve Component members who die on inactive duty versus active status.

This section would amend title 10, United States Code, to eliminate the different treatment accorded Reserve Component (RC) members who die from an injury or illness incurred or aggravated in the line of duty during inactive-duty training (IDT) as compared to RC members who die in the line of duty while on active duty. It is routine for RC members to be performing the same military mission but in different statuses depending on availability of funds and the types of duty required by the individual. There have been several accidents in the past

where annuity payments were calculated differently depending on the RC member's duty status at the time of death. For example, an Air Force T-6 crashed during takeoff on April 3, 2004: one Reservist was on IDT status and one on active duty status. Both members were Air Force Reserve Captains at the time of death and their families received significantly different survivor benefits.

The 11th Quadrennial Review of Military Compensation recommends to: "Calculate Survivor Benefit Plan benefits for a reservist who dies while performing inactive duty training using the same criteria as for a member who dies while on active duty." In addition, the Military Coalition (33 military, veterans, and uniformed service organizations), the Air Reserve Forces Policy Committee, and the Reserve Forces Policy Board have all advocated for IDT legislative change.

Subsection (a) adjusts the formula for paying an SBP annuity upon the death of Reserve Component member on IDT to be the same as that paid upon the death of a RC member on active duty, rather than using the member's effective years of service (based upon retirement points) in the SBP annuity calculation.

Subsection (b) adds the ability for a surviving spouse of a Reserve Component member to elect to have the SBP paid to the child. Unlike the death of a Reserve Component member who dies on active duty where the surviving spouse may elect to receive SBP or may elect to have the SBP paid to a dependent child, the surviving spouse of a RC member who dies while serving on IDT does not currently have the ability to elect to have the SBP paid to the child. Subsection (b) adds the ability for a surviving spouse of a Reserve Component member to elect to have the SBP paid to the child. Additionally, for deaths of RC members on IDT that occurred before the date of enactment, subsection (b) allows the Secretary concerned the authority, in consultation with the surviving spouse, to change the beneficiary of the SBP from the surviving spouse to the dependent child.

Subsection (c), assuming the change in subsection (a) is enacted, provides for a deemed election, which would allow the payment of the SBP annuity to a person, in the absence of a spouse or child, who is dependent upon the deceased member. For example, this would allow an SBP annuity to be paid to a dependent parent.

Section 632 would clarify the existing interpretation of surviving spouse to explicitly define the term widow and widower to include the surviving wife/husband of member who dies while on active duty or a member who dies after becoming eligible to elect a reserve-component annuity but has not yet made the election.

Budget Implications:

Section 631. The table below details resource requirements and impacted personnel associated with this proposal. These estimated requirements include the provision to recalculate SBP benefits from the date of enactment for survivors of members who died on IDT status since Sep 10, 2001.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	0.22	0.37	0.54	0.72	0.92	Military Retirement Fund			
Total*	0.22	0.37	0.54	0.72	0.92				

***Amounts reflect impact to mandatory Treasury outlays from the Military Retirement Fund**

Section 632. This section has no budgetary impact.

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

§1447. Definitions

In this subchapter:

(1) Plan.-The term "Plan" means the Survivor Benefit Plan established by this subchapter.

(2) Standard annuity.-The term "standard annuity" means an annuity provided by virtue of eligibility under section 1448(a)(1)(A) of this title.

(3) Reserve-component annuity.-The term "reserve-component annuity" means an annuity provided by virtue of eligibility under section 1448(a)(1)(B) of this title.

(4) Retired pay.-The term "retired pay" includes retainer pay paid under section 6330 of this title.

(5) Reserve-component retired pay.-The term "reserve-component retired pay" means retired pay under chapter 1223 of this title (or under chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act).

(6) Base amount.-The term "base amount" means the following:

(A) Full amount under standard annuity.-In the case of a person who dies after becoming entitled to retired pay, such term means the amount of monthly retired pay (determined without regard to any reduction under section 1409(b)(2) of this title) to which the person-

(i) was entitled when he became eligible for that pay; or

(ii) later became entitled by being advanced on the retired list, performing active duty, or being transferred from the temporary disability retired list to the permanent disability retired list.

(B) Full amount under reserve-component annuity.-In the case of a person who would have become eligible for reserve-component retired pay but for the fact that he died before becoming 60 years of age, such term means the amount of monthly retired pay for which the person would have been eligible-

(i) if he had been 60 years of age on the date of his death, for purposes of an annuity to become effective on the day after his death in accordance with a designation made under section 1448(e) of this title; or

(ii) upon becoming 60 years of age (if he had lived to that age), for purposes of an annuity to become effective on the 60th anniversary of his birth in accordance with a designation made under section 1448(e) of this title.

(C) Reduced amount.-Such term means any amount less than the amount otherwise applicable under subparagraph (A) or (B) with respect to an annuity provided under the Plan but which is not less than $300 and which is designated by the person (with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title) providing the annuity on or before-

(i) the first day for which he becomes eligible for retired pay, in the case of a person providing a standard annuity, or

(ii) the end of the 90-day period beginning on the date on which he receives the notification required by section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, in the case of a person providing a reserve-component annuity.

~~(7) Widow.-The term "widow" means the surviving wife of a person who, if not married to the person at the time he became eligible for retired pay-~~

~~(A) was married to him for at least one year immediately before his death; or~~

~~(B) is the mother of issue by that marriage.~~

~~(8) Widower.-The term "widower" means the surviving husband of a person who, if not married to the person at the time she became eligible for retired pay-~~

~~(A) was married to her for at least one year immediately before her death; or~~

~~(B) is the father of issue by that marriage.~~

(7) Widow.—The term “widow” means the surviving wife of a person who—

(A) died on active duty under the circumstances described in section 1448(d) of this title;

(B) died when or before eligible to elect a reserve-component annuity under the circumstances described in section 1448(f) of this title; or

(C) died under circumstances other than those described in subparagraphs (A) and (B) and if the surviving wife was not married to the person at the time the person became eligible for retired pay—

(i) was married to the person for at least one year immediately before the person’s death; or

(ii) is the mother of issue by that marriage.

(8) Widower.—The term “widower” means the surviving husband of a person who—

(A) died on active duty under the circumstances described in section 1448(d) of this title;

(B) died when or before eligible to elect a reserve-component annuity under the circumstances described in section 1448(f) of this title; or

(C) died under circumstances other than those described in subparagraphs (A) and (B) and, if the surviving husband was not married to the person at the time the person became eligible for retired pay—

(i) was married to the person for at least one year immediately before the person's death; or

(ii) is the father of issue by that marriage.

(9) Surviving spouse.-The term "surviving spouse" means a widow or widower.

(10) Former spouse.-The term "former spouse" means the surviving former husband or wife of a person who is eligible to participate in the Plan.

(11) Dependent child.-

(A) In general.-The term "dependent child" means a person who-

(i) is unmarried;

(ii) is (I) under 18 years of age, (II) at least 18, but under 22, years of age and pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution, or (III) incapable of self support because of a mental or physical incapacity existing before the person's eighteenth birthday or incurred on or after that birthday, but before the person's twenty-second birthday, while pursuing such a full-time course of study or training; and

(iii) is the child of a person to whom the Plan applies, including (I) an adopted child, and (II) a stepchild, foster child, or recognized natural child who lived with that person in a regular parent-child relationship.

(B) Special rules for college students.-For the purpose of subparagraph (A), a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while regularly pursuing such a course of study or training, is considered to have become 22 years of age on the first day of July after that birthday. A child who is a student is considered not to have ceased to be a student during an interim between school years if the interim is not more than 150 days and if the child shows to the satisfaction of the Secretary of Defense that the child has a bona fide intention of continuing to pursue a course of study or training in the same or a different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(C) Foster children.-A foster child, to qualify under this paragraph as the dependent child of a person to whom the Plan applies, must, at the time of the death of that person, also reside with, and receive over one-half of his support from, that person, and not be cared for under a social agency contract. The temporary absence of a foster child from the residence of that person, while a student as described in this paragraph, shall not be considered to affect the residence of such a foster child.

(12) Court.-The term "court" has the meaning given that term by section 1408(a)(1) of this title.

(13) Court order.-

(A) In general.-The term "court order" means a court's final decree of divorce, dissolution, or annulment or a court ordered, ratified, or approved property

settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or of a court ordered, ratified, or approved property settlement agreement incident to such previously issued decree).

(B) Final decree.-The term "final decree" means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for the taking of such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

(C) Regular on its face.-The term "regular on its face", when used in connection with a court order, means a court order that meets the conditions prescribed in section 1408(b)(2) of this title.

§1448. Application of Plan

(a) General Rules for Participation in the Plan.-

(1) Name of plan; eligible participants.—The program established by this subchapter shall be known as the Survivor Benefit Plan. The following persons are eligible to participate in the Plan:

(A) Persons entitled to retired pay.

(B) Persons who would be eligible for reserve-component retired pay but for the fact that they are under 60 years of age.

(2) Participants in the plan.—The Plan applies to the following persons, who shall be participants in the Plan:

(A) Standard annuity participants.—A person who is eligible to participate in the Plan under paragraph (1)(A) and who is married or has a dependent child when he becomes entitled to retired pay, unless he elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the first day for which he is eligible for that pay.

(B) Reserve-component annuity participants.—A person who (i) is eligible to participate in the Plan under paragraph (1)(B), and (ii) is married or has a dependent child when he is notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, unless the person elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the end of the 90-day period beginning on the date on which he receives that notification.

A person who elects under subparagraph (B) not to participate in the Plan remains eligible, upon reaching 60 years of age and otherwise becoming entitled to retired pay, to participate in the Plan in accordance with eligibility under paragraph (1)(A).

(3) ELECTIONS.—

(A) Spousal consent for certain elections respecting standard annuity.—A married person who is eligible to provide a standard annuity may not without the concurrence of the person's spouse elect-

(i) not to participate in the Plan;

(ii) to provide an annuity for the person's spouse at less than the maximum level; or

(iii) to provide an annuity for a dependent child but not for the person's spouse.

(B) Spousal consent for certain elections respecting reserve-component annuity.—A married person who is eligible to provide a reserve-component annuity may not without the concurrence of the person's spouse elect-

(i) not to participate in the Plan;

(ii) to designate under subsection (e)(2) the effective date for commencement of annuity payments under the Plan in the event that the member dies before becoming 60 years of age to be the 60th anniversary of the member's birth (rather than the day after the date of the member's death);

(iii) to provide an annuity for the person's spouse at less than the maximum level; or

(iv) to provide an annuity for a dependent child but not for the person's spouse.

(C) Exception when spouse unavailable.—A person may make an election described in subparagraph (A) or (B) without the concurrence of the person's spouse if the person establishes to the satisfaction of the Secretary concerned-

(i) that the spouse's whereabouts cannot be determined; or

(ii) that, due to exceptional circumstances, requiring the person to seek the spouse's consent would otherwise be inappropriate.

(D) Construction with former spouse election provisions.—This paragraph does not affect any right or obligation to elect to provide an annuity for a former spouse (or for a former spouse and dependent child) under subsection (b)(2).

(E) Notice to spouse of election to provide former spouse annuity.—If a married person who is eligible to provide a standard annuity elects to provide an annuity for a former spouse (or for a former spouse and dependent child) under subsection (b)(2), that person's spouse shall be notified of that election.

(4) Irrevocability of elections.—

(A) Standard annuity.—An election under paragraph (2)(A) is irrevocable if not revoked before the date on which the person first becomes entitled to retired pay.

(B) Reserve-component annuity.—An election under paragraph (2)(B) is irrevocable if not revoked before the end of the 90-day period referred to in that paragraph.

(5) Participation by person marrying after retirement, etc.—

(A) Election to participate in plan.—A person who is not married and has no dependent child upon becoming eligible to participate in the Plan but who later marries or acquires a dependent child may elect to participate in the Plan.

(B) Manner and time of election.—Such an election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date on which that person marries or acquires that dependent child.

(C) Limitation on revocation of election.—Such an election may not be revoked except in accordance with subsection (b)(3).

(D) Effective date of election.—The election is effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(E) Designation if rcsbp election.—In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(6) Election out of plan by person with spouse coverage who remarries.—

(A) General rule.—A person-

(i) who is a participant in the Plan and is providing coverage under the Plan for a spouse (or a spouse and child);

(ii) who does not have an eligible spouse beneficiary under the Plan; and

(iii) who remarries,

may elect not to provide coverage under the Plan for the person's spouse.

(B) Effect of election on retired pay.—If such an election is made, reductions in the retired pay of that person under section 1452 of this title shall not be made.

(C) Terms and conditions of election.—An election under this paragraph-

(i) is irrevocable;

(ii) shall be made within one year after the person's remarriage; and

(iii) shall be made in such form and manner as may be prescribed in regulations under section 1455 of this title.

(D) Notice to spouse.—If a person makes an election under this paragraph-

(i) not to participate in the Plan;

(ii) to provide an annuity for the person's spouse at less than the maximum level; or

(iii) to provide an annuity for a dependent child but not for the person's spouse,

the person's spouse shall be notified of that election.

(E) Construction with former spouse election provisions.—This paragraph does not affect any right or obligation to elect to provide an annuity to a former spouse under subsection (b).

(b) Insurable Interest and Former Spouse Coverage.—

(1) Coverage for person with insurable interest.—

(A) General rule.—A person who is not married and does not have a dependent child upon becoming eligible to participate in the Plan may elect to provide an annuity under the Plan to a natural person with an insurable interest in that person. In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(B) Termination of coverage.—An election under subparagraph (A) for a beneficiary who is not the former spouse of the person providing the annuity may be terminated. Any such termination shall be made by a participant by the submission to the Secretary concerned of a request to discontinue participation in the Plan, and

such participation in the Plan shall be discontinued effective on the first day of the first month following the month in which the request is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired pay on account of participation in the Plan or, in the case of a person who has been required to make deposits in the Treasury on account of participation in the Plan, such person may discontinue making such deposits effective on such date.

(C) Form for discontinuation.—A request under subparagraph (B) to discontinue participation in the Plan shall be in such form and shall contain such information as may be required under regulations prescribed by the Secretary of Defense.

(D) Withdrawal of request for discontinuation.—The Secretary concerned shall furnish promptly to each person who submits a request under subparagraph (B) to discontinue participation in the Plan a written statement of the advantages and disadvantages of participating in the Plan and the possible disadvantages of discontinuing participation. A person may withdraw the request to discontinue participation if withdrawn within 30 days after having been submitted to the Secretary concerned.

(E) Consequences of discontinuation.—Once participation is discontinued, benefits may not be paid in conjunction with the earlier participation in the Plan and premiums paid may not be refunded. Participation in the Plan may not later be resumed except through a qualified election under paragraph (5) of subsection (a) or under subparagraph (G) of this paragraph.

(F) Vitiation of election by disability retiree who dies of disability-related cause.—If a member retired after November 23, 2003, under chapter 61 of this title dies within one year after the date on which the member is so retired and the cause of death is related to a disability for which the member was retired under that chapter (as determined under regulations prescribed by the Secretary of Defense)-

(i) an election made by the member under paragraph (1) to provide an annuity under the Plan to any person other than a dependent of that member (as defined in section 1072(2) of this title) is vitiated; and

(ii) the amounts by which the member's retired pay was reduced under section 1452 of this title shall be refunded and paid to the person to whom the annuity under the Plan would have been paid pursuant to such election.

(G) Election of new beneficiary upon death of previous beneficiary.—

(i) Authority for election.—If the reason for discontinuation in the Plan is the death of the beneficiary, the participant in the Plan may elect a new beneficiary. Any such beneficiary must be a natural person with an insurable interest in the participant. Such an election may be made only during the 180-day period beginning on the date of the death of the previous beneficiary.

(ii) Procedures.—Such an election shall be in writing, signed by the participant, and made in such form and manner as the Secretary concerned may prescribe. Such an election shall be effective the first day of the first month following the month in which the election is received by the Secretary.

(iii) Vitiation of election by participant who dies within two years of election.—If a person providing an annuity under a election under clause (i) dies

before the end of the two-year period beginning on the effective date of the election-

(I) the election is vitiated; and

(II) the amount by which the person's retired pay was reduced under section 1452 of this title that is attributable to the election shall be paid in a lump sum to the person who would have been the deceased person's beneficiary under the vitiated election if the deceased person had died after the end of such two-year period.

(2) Former spouse coverage upon becoming a participant in the plan.—

(A) General rule.—A person who has a former spouse upon becoming eligible to participate in the Plan may elect to provide an annuity to that former spouse.

(B) Effect of former spouse election on spouse or dependent child.—In the case of a person with a spouse or a dependent child, such an election prevents payment of an annuity to that spouse or child (other than a child who is a beneficiary under an election under paragraph (4)), including payment under subsection (d).

(C) Designation if more than one former spouse.—If there is more than one former spouse, the person shall designate which former spouse is to be provided the annuity.

(D) Designation if RCSBP election.—In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(3) Former spouse coverage by persons already participating in plan.—

(A) Election of coverage.—

(i) Authority for election.—A person-

(I) who is a participant in the Plan and is providing coverage for a spouse or a spouse and child (even though there is no beneficiary currently eligible for such coverage), and

(II) who has a former spouse who was not that person's former spouse when that person became eligible to participate in the Plan,

may (subject to subparagraph (B)) elect to provide an annuity to that former spouse.

(ii) Termination of previous coverage.—Any such election terminates any previous coverage under the Plan.

(iii) Manner and time of election.—Any such election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date of the decree of divorce, dissolution, or annulment.

(B) Limitation on election.—A person may not make an election under subparagraph (A) to provide an annuity to a former spouse who that person married after becoming eligible for retired pay unless-

(i) the person was married to that former spouse for at least one year, or

(ii) that former spouse is the parent of issue by that marriage.

(C) Irrevocability, etc.—An election under this paragraph may not be revoked except in accordance with section 1450(f) of this title. This paragraph does not provide the authority to change a designation previously made under subsection (e).

(D) Notice to spouse.—If a person who is married makes an election to provide an annuity to a former spouse under this paragraph, that person's spouse shall be notified of the election.

(E) Effective date of election.—An election under this paragraph is effective as of-

(i) the first day of the first month following the month in which the election is received by the Secretary concerned; or

(ii) in the case of a person required (as described in section 1450(f)(3)(B) of this title) to make the election by reason of a court order or filing the date of which is after October 16, 1998, the first day of the first month which begins after the date of that court order or filing.

(4) Former spouse and child coverage.—A person who elects to provide an annuity for a former spouse under paragraph (2) or (3) may, at the time of the election, elect to provide coverage under that annuity for both the former spouse and a dependent child, if the child resulted from the person's marriage to that former spouse.

(5) Disclosure of whether election of former spouse coverage is required.—A person who elects to provide an annuity to a former spouse under paragraph (2) or (3) shall, at the time of making the election, provide the Secretary concerned with a written statement (in a form to be prescribed by that Secretary and signed by such person and the former spouse) setting forth-

(A) whether the election is being made pursuant to the requirements of a court order; or

(B) whether the election is being made pursuant to a written agreement previously entered into voluntarily by such person as a part of, or incident to, a proceeding of divorce, dissolution, or annulment and (if so) whether such voluntary written agreement has been incorporated in, or ratified or approved by, a court order.

(6) Special needs trusts for sole benefit of certain dependent children.—A person who has established a supplemental or special needs trust under subparagraph (A) or (C) of section 1917(d)(4) of the Social Security Act (42 U.S.C. 1396p(d)(4)) for the sole benefit of a dependent child considered disabled under section 1614(a)(3) of that Act (42 U.S.C. 1382c(a)(3)) who is incapable of self-support because of mental or physical incapacity may elect to provide an annuity to that supplemental or special needs trust.

(7) Effect of death of former spouse beneficiary.—

(A) Termination of participation in plan.—A person who elects to provide an annuity to a former spouse under paragraph (2) or (3) and whose former spouse

subsequently dies is no longer a participant in the Plan, effective on the date of death of the former spouse.

(B) Authority for election of new spouse beneficiary.—If a person's participation in the Plan is discontinued by reason of the death of a former spouse beneficiary, the person may elect to resume participation in the Plan and to elect a new spouse beneficiary as follows:

(i) Married on the date of death of former spouse.—A person who is married at the time of the death of the former spouse beneficiary may elect to provide coverage to that person's spouse. Such an election must be received by the Secretary concerned within one year after the date of death of the former spouse beneficiary.

(ii) Marriage after death of former spouse beneficiary.—A person who is not married at the time of the death of the former spouse beneficiary and who later marries may elect to provide spouse coverage. Such an election must be received by the Secretary concerned within one year after the date on which that person marries.

(C) Effective date of election.—The effective date of election under this paragraph shall be as follows:

(i) An election under subparagraph (B)(i) is effective as of the first day of the first calendar month following the death of the former spouse beneficiary.

(ii) An election under subparagraph (B)(ii) is effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(D) Level of coverage.—A person making an election under subparagraph (B) may not reduce the base amount previously elected.

(E) Procedures.— An election under this paragraph shall be in writing, signed by the participant, and made in such form and manner as the Secretary concerned may prescribe.

(F) Irrevocability.—An election under this paragraph is irrevocable.

(c) Persons on Temporary Disability Retired List.—The application of the Plan to a person whose name is on the temporary disability retired list terminates when his name is removed from that list and he is no longer entitled to disability retired pay.

(d) Coverage for Survivors of Members Who Die on Active Duty.—

(1) Surviving spouse annuity.—Except as provided in paragraph (2)(B), the Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of-

(A) a member who dies while on active duty after-

(i) becoming eligible to receive retired pay;

(ii) qualifying for retired pay except that the member has not applied for or been granted that pay; or

(iii) completing 20 years of active service but before the member is eligible to retire as a commissioned officer because the member has not completed 10 years of active commissioned service; or

(B) a member not described in subparagraph (A) who dies in line of duty while on active duty.

(2) Dependent children.—

(A) Annuity when no eligible surviving spouse.—In the case of a member described in paragraph (1), the Secretary concerned shall pay an annuity under this subchapter to the member's dependent children under subsection (a)(2) or (a)(4) of section 1450 of this title as applicable.

(B) Optional annuity when there is an eligible surviving spouse.—In the case of a member described in paragraph (1) who dies after October 7, 2001, and for whom there is a surviving spouse eligible for an annuity under paragraph (1), the Secretary may pay an annuity under this subchapter to the member's dependent children under subsection (a)(3) or (a)(4) of section 1450 of this title, if applicable, instead of paying an annuity to the surviving spouse under paragraph (1), if the Secretary concerned, in consultation with the surviving spouse, determines it appropriate to provide an annuity for the dependent children under this paragraph instead of an annuity for the surviving spouse under paragraph (1).

(3) Mandatory former spouse annuity.—If a member described in paragraph (1) is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan or has made an election under subsection (b) to provide an annuity to a former spouse, the Secretary-

(A) may not pay an annuity under paragraph (1) or (2); but

(B) shall pay an annuity to that former spouse as if the member had been a participant in the Plan and had made an election under subsection (b) to provide an annuity to the former spouse, or in accordance with that election, as the case may be, if the Secretary receives a written request from the former spouse concerned that the election be deemed to have been made in the same manner as provided in section 1450(f)(3) of this title.

(4) Priority.—An annuity that may be provided under this subsection shall be provided in preference to an annuity that may be provided under any other provision of this subchapter on account of service of the same member.

(5) Computation.—The amount of an annuity under this subsection is computed under section 1451(c) of this title.

(6) Deemed election.—

(A) Annuity for dependent.—In the case of a member described in paragraph (1) who dies after November 23, 2003, the Secretary concerned may, if no other annuity is payable on behalf of the member under this subchapter, pay an annuity to a natural person who has an insurable interest in such member as if the annuity were elected by the member under subsection (b)(1). The Secretary concerned may pay such an annuity under this paragraph only in the case of a person who is a dependent of that member (as defined in section 1072(2) of this title).

(B) Computation of annuity.—An annuity under this subparagraph shall be computed under section 1451(b) of this title as if the member had retired for total disability on the date of death with reductions as specified under section 1452(c) of this title, as applicable to the ages of the member and the natural person with an insurable interest.

(e) Designation for Commencement of Reserve-Component Annuity.—In any case in which a person is required to make a designation under this subsection, the person shall designate whether, in the event he dies before becoming 60 years of age, the annuity provided shall become effective on-

(1) the day after the date of his death; or

(2) the 60th anniversary of his birth.

(f) Coverage of Survivors of Persons Dying When or Before Eligible To Elect Reserve-Component Annuity.—

(1) Surviving spouse annuity.—The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a person who-

(A) is eligible to provide a reserve-component annuity and dies-

(i) before being notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay; or

(ii) during the 90-day period beginning on the date he receives notification under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay if he had not made an election under subsection (a)(2)(B) to participate in the Plan; or

(B) is a member of a reserve component not described in subparagraph (A) and dies from an injury or illness incurred or aggravated in the line of duty during inactive-duty training.

~~(2) Dependent child annuity.—The Secretary concerned shall pay an annuity under this subchapter to the dependent child, or to a special needs trust pursuant to section 1450(a)(4) of this title, of a person described in paragraph (1) if there is no surviving spouse or if the person's surviving spouse subsequently dies.~~

(2) Dependent children annuity.—

(A) Annuity when no eligible surviving spouse.—In the case of a person described in paragraph (1), the Secretary concerned shall pay an annuity under this subchapter to the dependent children of that person under subsection (a)(2) or (a)(4) of section 1450 of this title as applicable.

(B) Optional annuity when there is an eligible surviving spouse.—The Secretary may pay an annuity under this subchapter to the dependent children of a person described in paragraph (1) under subsection (a)(3) or (a)(4) of section 1450 of this title, if applicable, instead of paying an annuity to the surviving spouse under paragraph (1), if the Secretary concerned, in consultation with the surviving spouse, determines it appropriate to provide an annuity for the dependent children under this paragraph instead of an annuity for the surviving spouse under paragraph (1).

(3) Mandatory former spouse annuity.—If a person described in paragraph (1) is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan or has made an election under subsection (b) to provide an annuity to a former spouse, the Secretary-

(A) may not pay an annuity under paragraph (1) or (2); but

(B) shall pay an annuity to that former spouse as if the person had been a participant in the Plan and had made an election under subsection (b) to provide an annuity to the former spouse, or in accordance with that election, as the case may be, if the Secretary receives a written request from the former spouse concerned that the election be deemed to have been made in the same manner as provided in section 1450(f)(3) of this title.

(4) Computation.—The amount of an annuity under this subsection is computed under section 1451(c) of this title.

(5) Deemed election to provide an annuity for dependent.—In the case of a person described in paragraph (1) who dies on or after the date of the enactment of this paragraph, the Secretary concerned may, if no other annuity is payable on behalf of that person under this subchapter, pay an annuity to a natural person who has an insurable interest in such person as if the annuity were elected by the person under subsection (b)(1). The Secretary concerned may pay such an annuity under this paragraph only in the case of a person who is a dependent of that deceased person (as defined in section 1072(2) of this title). An annuity under this paragraph shall be computed in the same manner as provided under subparagraph (B) of subsection (d)(6) for an annuity under that subsection.

(g) Election To Increase Coverage Upon Remarriage.—

(1) Election.—A person-

(A) who is a participant in the Plan and is providing coverage under subsection (a) for a spouse or a spouse and child, but at less than the maximum level; and

(B) who remarries,

may elect, within one year of such remarriage, to increase the level of coverage provided under the Plan to a level not in excess of the current retired pay of that person.

(2) Payment required.—Such an election shall be contingent on the person paying to the United States the amount determined under paragraph (3) plus interest on such amount at a rate determined under regulations prescribed by the Secretary of Defense.

(3) Amount to be paid.—The amount referred to in paragraph (2) is the amount equal to the difference between-

(A) the amount that would have been withheld from such person's retired pay under section 1452 of this title if the higher level of coverage had been in effect from the time the person became a participant in the Plan; and

(B) the amount of such person's retired pay actually withheld.

(4) Manner of making election.—An election under paragraph (1) shall be made in such manner as the Secretary shall prescribe and shall become effective upon receipt of the payment required by paragraph (2).

(5) Disposition of payments.—A payment received under this subsection by the Secretary of Defense shall be deposited into the Department of Defense Military Retirement Fund. Any other payment received under this subsection shall be deposited in the Treasury as miscellaneous receipts.

§1448a. Election to discontinue participation: one-year opportunity after second anniversary of commencement of payment of retired pay

(a) Authority.—A participant in the Plan may, subject to the provisions of this section, elect to discontinue participation in the Plan at any time during the one-year period beginning on the second anniversary of the date on which payment of retired pay to the participant commences.

(b) Concurrence of Spouse.—

(1) Concurrence required.—A married participant may not (except as provided in paragraph (2)) make an election under subsection (a) without the concurrence of the participant's spouse.

(2) Exceptions.—A participant may make such an election without the concurrence of the participant's spouse by establishing to the satisfaction of the Secretary concerned that one of the conditions specified in section 1448(a)(3)(C) of this title exists.

(3) Form of concurrence.—The concurrence of a spouse under paragraph (1) shall be made in such written form and shall contain such information as may be required under regulations prescribed by the Secretary of Defense.

(c) Limitation on Election When Former Spouse Coverage in Effect.—The limitation set forth in section 1450(f)(2) of this title applies to an election to discontinue participation in the Plan under subsection (a).

(d) Withdrawal of Election To Discontinue.—Section 1448(b)(1)(D) of this title applies to an election under subsection (a).

(e) Consequences of Discontinuation.—Section 1448(b)(1)(E) of this title applies to an election under subsection (a).

(f) Notice to Affected Beneficiaries.—The Secretary concerned shall notify any former spouse or other natural person previously designated under section 1448(b) of this title of an election to discontinue participation under subsection (a).

(g) Effective Date of Election.—An election under subsection (a) is effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(h) Inapplicability of Irrevocability Provisions.—Paragraphs (4)(B) and (5)(C) of section 1448(a) of this title do not apply to prevent an election under subsection (a).

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§1450. Payment of annuity: beneficiaries

(a) In General.—Effective as of the first day after the death of a person to whom section 1448 of this title applies (or on such other day as that person may provide under subsection (j)), a monthly annuity under section 1451 of this title shall be paid to the person's beneficiaries under the Plan, as follows:

(1) Surviving spouse or former spouse.—The eligible surviving spouse or the eligible former spouse.

(2) Surviving children.—The surviving dependent children in equal shares, if the eligible surviving spouse or the eligible former spouse is dead, dies, or otherwise becomes ineligible under this section.

(3) Dependent children.—The dependent children in equal shares if the person to whom section 1448 of this title applies (with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title) elected to provide an annuity for dependent children but not for the spouse or former spouse.

(4) Special needs trusts for sole benefit of certain dependent children.—Notwithstanding subsection (i), a supplemental or special needs trust established under subparagraph (A) or (C) of section 1917(d)(4) of the Social Security Act (42 U.S.C. 1396p(d)(4)) for the sole benefit of a dependent child considered disabled under section 1614(a)(3) of that Act (42 U.S.C. 1382c(a)(3)) who is incapable of self-support because of mental or physical incapacity.

(5) Natural person designated under "insurable interest" coverage.—The natural person designated under section 1448(b)(1) of this title, unless the election to provide an annuity to the natural person has been changed as provided in subsection (f).

(b) Termination of Annuity for Death, Remarriage Before Age 55, Etc.—

(1) General rule.—An annuity payable to the beneficiary terminates effective as of the first day of the month in which eligibility is lost.

(2) Termination of spouse annuity upon death or remarriage before age 55.—An annuity for a surviving spouse or former spouse shall be paid to the surviving spouse or former spouse while the surviving spouse or former spouse is living or, if the surviving spouse or former spouse remarries before reaching age 55, until the surviving spouse or former spouse remarries.

(3) Effect of termination of subsequent marriage before age 55.—If the surviving spouse or former spouse remarries before reaching age 55 and that marriage is terminated by death, annulment, or divorce, payment of the annuity shall be resumed effective as of the first day of the month in which the marriage is so terminated. However, if the surviving spouse or former spouse is also entitled to an annuity under the Plan based upon the marriage so terminated, the surviving spouse or former spouse may not receive both annuities but must elect which to receive.

(c) Offset for Amount of Dependency and Indemnity Compensation.—

(1) Required offset.—If, upon the death of a person to whom section 1448 of this title applies, the surviving spouse or former spouse of that person is also entitled to

dependency and indemnity compensation under section 1311(a) of title 38, the surviving spouse or former spouse may be paid an annuity under this section, but only in the amount that the annuity otherwise payable under this section would exceed that compensation.

(2) Effective date of offset.—A reduction in an annuity under this section required by paragraph (1) shall be effective on the date of the commencement of the period of payment of such dependency and indemnity compensation under title 38.

(3) Limitation on recoupment of offset amount.—Any amount subject to offset under this subsection that was previously paid to the surviving spouse or former spouse shall be recouped only to the extent that the amount paid exceeds any amount to be refunded under subsection (e). In notifying a surviving spouse or former spouse of the recoupment requirement, the Secretary shall provide the spouse or former spouse-

(A) a single notice of the net amount to be recouped or the net amount to be refunded, as applicable, under this subsection or subsection (e);

(B) a written explanation of the statutory requirements for recoupment of the offset amount and for refund of any applicable amount deducted from retired pay;

(C) a detailed accounting of how the offset amount being recouped and retired pay deduction amount being refunded were calculated; and

(D) contact information for a person who can provide information about the offset recoupment and retired pay deduction refund processes and answer questions the surviving spouse or former spouse may have about the requirements, processes, or amounts.

(d) Limitation on Payment of Annuities When Coverage Under Civil Service Retirement Elected.—If, upon the death of a person to whom section 1448 of this title applies, that person had in effect a waiver of that person's retired pay for the purposes of subchapter III of chapter 83 of title 5 or chapter 84 of such title, an annuity under this section shall not be payable unless, in accordance with section 8339(j) or 8416(a) of title 5, that person notified the Office of Personnel Management that he did not desire any spouse surviving him to receive an annuity under section 8341(b) or 8442(a) of that title.

(e) Refund of Amounts Deducted From Retired Pay When DIC Offset Is Applicable.—

(1) Full refund when dic greater than sbp annuity.—If an annuity under this section is not payable because of subsection (c), any amount deducted from the retired pay of the deceased under section 1452 of this title shall be refunded to the surviving spouse or former spouse.

(2) Partial refund when sbp annuity reduced by dic.—If, because of subsection (c), the annuity payable is less than the amount established under section 1451 of this title, the annuity payable shall be recalculated under that section. The amount of the reduction in the retired pay required to provide that recalculated annuity shall be computed under section 1452 of this title, and the difference between the amount deducted before the computation of that recalculated annuity and the amount that would have been deducted on the basis of that recalculated annuity shall be refunded to the surviving spouse or former spouse.

(f) Change in Election of Insurable Interest or Former Spouse Beneficiary.—

(1) Authorized changes.—

(A) Election in favor of spouse or child.—A person who elects to provide an annuity to a person designated by him under section 1448(b) of this title may, subject to paragraph (2), change that election and provide an annuity to his spouse or dependent child.

(B) Notice.—The Secretary concerned shall notify the former spouse or other natural person previously designated under section 1448(b) of this title of any change of election under subparagraph (A).

(C) Procedures, effective date, etc.—Any such change of election is subject to the same rules with respect to execution, revocation, and effectiveness as are set forth in section 1448(a)(5) of this title (without regard to the eligibility of the person making the change of election to make such an election under that section). Notwithstanding the preceding sentence, a change of election under this subsection to provide an annuity to a spouse instead of a former spouse may (subject to paragraph (2)) be made at any time after the person providing the annuity remarries without regard to the time limitation in section 1448(a)(5)(B) of this title.

(2) Limitation on change in beneficiary when former spouse coverage in effect.—A person who, incident to a proceeding of divorce, dissolution, or annulment, is required by a court order to elect under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child), or who enters into a written agreement (whether voluntary or required by a court order) to make such an election, and who makes an election pursuant to such order or agreement, may not change that election under paragraph (1) unless, of the following requirements, whichever are applicable in a particular case are satisfied:

(A) In a case in which the election is required by a court order, or in which an agreement to make the election has been incorporated in or ratified or approved by a court order, the person-

(i) furnishes to the Secretary concerned a certified copy of a court order which is regular on its face and which modifies the provisions of all previous court orders relating to such election, or the agreement to make such election, so as to permit the person to change the election; and

(ii) certifies to the Secretary concerned that the court order is valid and in effect.

(B) In a case of a written agreement that has not been incorporated in or ratified or approved by a court order, the person-

(i) furnishes to the Secretary concerned a statement, in such form as the Secretary concerned may prescribe, signed by the former spouse and evidencing the former spouse's agreement to a change in the election under paragraph (1); and

(ii) certifies to the Secretary concerned that the statement is current and in effect.

(3) Required former spouse election to be deemed to have been made.—

(A) Deemed election upon request by former spouse.—If a person described in paragraph (2) or (3) of section 1448(b) of this title is required (as described in subparagraph (B)) to elect under section 1448(b) of this title to provide an annuity to a former spouse and such person then fails or refuses to make such an election, such person shall be deemed to have made such an election if the Secretary concerned receives the following:

(i) Request from former spouse.—A written request, in such manner as the Secretary shall prescribe, from the former spouse concerned requesting that such an election be deemed to have been made.

(ii) Copy of court order or other official statement.—Either-

(I) a copy of the court order, regular on its face, which requires such election or incorporates, ratifies, or approves the written agreement of such person; or

(II) a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable State law.

(B) Persons required to make election.—A person shall be considered for purposes of subparagraph (A) to be required to elect under section 1448(b) of this title to provide an annuity to a former spouse if-

(i) the person enters, incident to a proceeding of divorce, dissolution, or annulment, into a written agreement to make such an election and the agreement (I) has been incorporated in or ratified or approved by a court order, or (II) has been filed with the court of appropriate jurisdiction in accordance with applicable State law; or

(ii) the person is required by a court order to make such an election.

(C) Time limit for request by former spouse.—An election may not be deemed to have been made under subparagraph (A) in the case of any person unless the Secretary concerned receives a request from the former spouse of the person within one year of the date of the court order or filing involved.

(D) Effective date of deemed election.—An election deemed to have been made under subparagraph (A) shall become effective on the day referred to in section 1448(b)(3)(E)(ii) of this title.

(4) Former spouse coverage may be required by court order.—A court order may require a person to elect (or to enter into an agreement to elect) under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child).

(g) Limitation on Changing or Revoking Elections.—

(1) In general.—An election under this section may not be changed or revoked.

(2) Exceptions.—Paragraph (1) does not apply to-

(A) a revocation of an election under section 1449(b) of this title; or

(B) a change in an election under subsection (f).

(h) Treatment of Annuities Under Other Laws.—Except as provided in section 1451 of this title, an annuity under this section is in addition to any other payment to which a person is entitled under any other provision of law. Such annuity shall be considered as income under laws administered by the Secretary of Veterans Affairs.

(i) Annuities Exempt From Certain Legal Process.—Except as provided in subsection (a)(4) or (l)(3)(B), an annuity under this section is not assignable or subject to execution, levy, attachment, garnishment, or other legal process.

(j) Effective Date of Reserve-Component Annuities.—

(1) Persons making section 1448(e) designation.—A reserve-component annuity shall be effective in accordance with the designation made under section 1448(e) of this title by the person providing the annuity.

(2) Persons dying before making section 1448(e) designation.—An annuity payable under section 1448(f) of this title shall be effective on the day after the date of the death of the person upon whose service the right to the annuity is based.

(k) Adjustment of Spouse or Former Spouse Annuity Upon Loss of Dependency and Indemnity Compensation.—

(1) Readjustment if beneficiary 55 years of age or more.—If a surviving spouse or former spouse whose annuity has been adjusted under subsection (c) subsequently loses entitlement to dependency and indemnity compensation under section 1311(a) of title 38 because of the remarriage of the surviving spouse, or former spouse, and if at the time of such remarriage the surviving spouse or former spouse is 55 years of age or more, the amount of the annuity of the surviving spouse or former spouse shall be readjusted, effective on the effective date of such loss of dependency and indemnity compensation, to the amount of the annuity which would be in effect with respect to the surviving spouse or former spouse if the adjustment under subsection (c) had never been made.

(2) Repayment of amounts previously refunded.—

(A) General rule.—A surviving spouse or former spouse whose annuity is readjusted under paragraph (1) shall repay any amount refunded under subsection (e) by reason of the adjustment under subsection (c).

(B) Interest required if repayment not a lump sum.—If the repayment is not made in a lump sum, the surviving spouse or former spouse shall pay interest on the amount to be repaid. Such interest shall commence on the date on which the first such payment is due and shall be applied over the period during which any part of the repayment remains to be paid.

(C) Manner of repayment; rate of interest.—The manner in which such repayment shall be made, and the rate of any such interest, shall be prescribed in regulations under section 1455 of this title.

(D) Deposit of amounts repaid.—An amount repaid under this paragraph (including any such interest) received by the Secretary of Defense shall be deposited into the Department of Defense Military Retirement Fund. Any other amount repaid under this paragraph shall be deposited into the Treasury as miscellaneous receipts.

(l) Participants in the Plan Who Are Missing.—

(1) Authority to presume death of missing participant.—

(A) In general.—Upon application of the beneficiary of a participant in the Plan who is missing, the Secretary concerned may determine for purposes of this subchapter that the participant is presumed dead.

(B) Participant who is missing.—A participant in the Plan is considered to be missing for purposes of this subsection if-

(i) the retired pay of the participant has been suspended on the basis that the participant is missing; or

(ii) in the case of a participant in the Plan who would be eligible for reserve-component retired pay but for the fact that he is under 60 years of age, his retired pay, if he were entitled to retired pay, would be suspended on the basis that he is missing.

(C) Requirements applicable to presumption of death.—Any such determination shall be made in accordance with regulations prescribed under section 1455 of this title. The Secretary concerned may not make a determination for purposes of this subchapter that a participant who is missing is presumed dead unless the Secretary finds that-

(i) the participant has been missing for at least 30 days; and

(ii) the circumstances under which the participant is missing would lead a reasonably prudent person to conclude that the participant is dead.

(2) Commencement of annuity.—Upon a determination under paragraph (1) with respect to a participant in the Plan, an annuity otherwise payable under this subchapter shall be paid as if the participant died on the date as of which the retired pay of the participant was suspended.

(3) Effect of person not being dead.—

(A) Termination of annuity.—If, after a determination under paragraph (1), the Secretary concerned determines that the participant is alive-

(i) any annuity being paid under this subchapter by reason of this subsection shall be terminated; and

(ii) the total amount of any annuity payments made by reason of this subsection shall constitute a debt to the United States.

(B) Collection from participant of annuity amounts erroneously paid.—A debt under subparagraph (A)(ii) may be collected or offset-

(i) from any retired pay otherwise payable to the participant;

(ii) if the participant is entitled to compensation under chapter 11 of title 38, from that compensation; or

(iii) if the participant is entitled to any other payment from the United States, from that payment.

(C) Collection from beneficiary.—If the participant dies before the full recovery of the amount of annuity payments described in subparagraph (A)(ii) has been made by the United States, the remaining amount of such annuity payments may be

collected from the participant's beneficiary under the Plan if that beneficiary was the recipient of the annuity payments made by reason of this subsection.

(m) Special Survivor Indemnity Allowance.—

(1) Provision of allowance.—The Secretary concerned shall pay a monthly special survivor indemnity allowance under this subsection to the surviving spouse or former spouse of a member of the uniformed services to whom section 1448 of this title applies if-

(A) the surviving spouse or former spouse is entitled to dependency and indemnity compensation under section 1311(a) of title 38;

(B) except for subsection (c) of this section, the surviving spouse or former spouse is eligible for an annuity by reason of a participant in the Plan under subsection (a)(1) of section 1448 of this title or by reason of coverage under subsection (d) of such section; and

(C) the eligibility of the surviving spouse or former spouse for an annuity as described in subparagraph (B) is affected by subsection (c) of this section.

(2) Amount of payment.—Subject to paragraph (3), the amount of the allowance paid to an eligible survivor under paragraph (1) for a month shall be equal to-

(A) for months during fiscal year 2009, $50;
(B) for months during fiscal year 2010, $60;
(C) for months during fiscal year 2011, $70;
(D) for months during fiscal year 2012, $80;
(E) for months during fiscal year 2013, $90;
(F) for months during fiscal year 2014, $150;
(G) for months during fiscal year 2015, $200;
(H) for months during fiscal year 2016, $275; and
(I) for months during fiscal year 2017, $310.

(3) Limitation.—The amount of the allowance paid to an eligible survivor under paragraph (1) for any month may not exceed the amount of the annuity for that month that is subject to offset under subsection (c).

(4) Status of payments.—An allowance paid under this subsection does not constitute an annuity, and amounts so paid are not subject to adjustment under any other provision of law.

(5) Source of funds.—The special survivor indemnity allowance shall be paid from amounts in the Department of Defense Military Retirement Fund established under section 1461 of this title.

(6) Effective date and duration.—This subsection shall only apply with respect to the month beginning on October 1, 2008, and subsequent months through the month ending on September 30, 2017. Effective on October 1, 2017, the authority provided by this subsection shall terminate. No special survivor indemnity allowance may be

paid to any person by reason of this subsection for any period before October 1, 2008, or beginning on or after October 1, 2017.

§1451. Amount of annuity

(a) Computation of Annuity for a Spouse, Former Spouse, or Child.—

(1) Standard annuity.—In the case of a standard annuity provided to a beneficiary under section 1450(a) of this title (other than under section ~~1450(a)(4)~~ 1450(a)(5), the monthly annuity payable to the beneficiary shall be determined as follows:

(A) Beneficiary under 62 years of age.—If the beneficiary is under 62 years of age or is a dependent child when becoming entitled to the annuity, the monthly annuity shall be the amount equal to 55 percent of the base amount.

(B) Beneficiary 62 years of age or older.—

(i) General rule.—If the beneficiary (other than a dependent child) is 62 years of age or older when becoming entitled to the annuity, the monthly annuity shall be the amount equal to the product of the base amount and the percent applicable to the month, as follows:

(I) For a month before October 2005, the applicable percent is 35 percent.

(II) For months after September 2005 and before April 2006, the applicable percent is 40 percent.

(III) For months after March 2006 and before April 2007, the applicable percent is 45 percent.

(IV) For months after March 2007 and before April 2008, the applicable percent is 50 percent.

(V) For months after March 2008, the applicable percent is 55 percent.

(ii) Rule if beneficiary eligible for social security offset computation.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(2) Reserve-component annuity.—In the case of a reserve-component annuity provided to a beneficiary under section 1450(a) of this title (other than under section ~~1450(a)(4)~~ 1450(a)(5), the monthly annuity payable to the beneficiary shall be determined as follows:

(A) Beneficiary under 62 years of age.—If the beneficiary is under 62 years of age or is a dependent child when becoming entitled to the annuity, the monthly annuity shall be the amount equal to a percentage of the base amount that-

(i) is less than 55 percent; and

(ii) is determined under subsection (f).

(B) Beneficiary 62 years of age or older.—

(i) General rule.—If the beneficiary (other than a dependent child) is 62 years of age or older when becoming entitled to the annuity, the monthly annuity shall be the amount equal to a percentage of the base amount that-

(I) is less than the percent specified under subsection (a)(1)(B)(i) as being applicable for the month; and

(II) is determined under subsection (f).

(ii) Rule if beneficiary eligible for social security offset computation.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if, at the time the beneficiary becomes entitled to the annuity, computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(b) Insurable Interest Beneficiary.—

(1) Standard annuity.—In the case of a standard annuity provided to a beneficiary under section ~~1450(a)(4)~~ 1450(a)(5) of this title, the monthly annuity payable to the beneficiary shall be the amount equal to 55 percent of the retired pay of the person who elected to provide the annuity after the reduction in that pay in accordance with section 1452(c) of this title.

(2) Reserve-component annuity.—In the case of a reserve-component annuity provided to a beneficiary under section ~~1450(a)(4)~~ 1450(a)(5) of this title, the monthly annuity payable to the beneficiary shall be the amount equal to a percentage of the retired pay of the person who elected to provide the annuity after the reduction in such pay in accordance with section 1452(c) of this title that-

(A) is less than 55 percent; and

(B) is determined under subsection (f).

(3) Computation of reserve-component annuity when participant dies before age 60.—For the purposes of paragraph (2), a person-

(A) who provides an annuity that is determined in accordance with that paragraph;

(B) who dies before becoming 60 years of age; and

(C) who at the time of death is otherwise entitled to retired pay,

shall be considered to have been entitled to retired pay at the time of death. The retired pay of such person for the purposes of such paragraph shall be computed on the basis of the rates of basic pay in effect on the date on which the annuity provided by such person is to become effective in accordance with the designation of such person under section 1448(e) of this title.

(c) Annuities for Survivors of Certain Persons Dying During a Period of Special Eligibility for SBP.—

(1) In general.—In the case of an annuity provided under section 1448(d) or 1448(f) of this title, the amount of the annuity shall be determined as follows:

(A) Beneficiary under 62 years of age.—If the person receiving the annuity is under 62 years of age or is a dependent child when the member or former member dies, the monthly annuity shall be the amount equal to 55 percent of the retired pay to which the member or former member would have been entitled if the member or former member had been entitled to that pay when he died determined as follows:

(i) In the case of an annuity provided under section 1448(d) or 1448(f)(1)(B) of this title (other than in a case covered by clause (ii) or (iii)), such retired pay shall

be computed as if the member had been retired under section 1201 of this title on the date of the member's death with a disability rated as total.

(ii) In the case of an annuity provided under section 1448(d)(1)(A) of this title by reason of the death of a member not in line of duty, such retired pay shall be computed based upon the member's years of active service when he died.

(iii) In the case of an annuity provided under ~~section 1448(f) of this title~~ section 1448(f)(1)(A) of this title by reason of the death of a member or former member not in line of duty, such retired pay shall be computed based upon the member or former member's years of ~~active~~ service when he died computed under section 12733 of this title.

(B) Beneficiary 62 years of age or older.—

(i) General rule.—If the person receiving the annuity (other than a dependent child) is 62 years of age or older when the member or former member dies, the monthly annuity shall be the amount equal to the applicable percent of the retired pay to which the member or former member would have been entitled as determined under subparagraph (A). The percent applicable for a month under the preceding sentence is the percent specified under subsection (a)(1)(B)(i) as being applicable for that month.

(ii) Rule if beneficiary eligible for social security offset computation.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(2) DIC offset.—An annuity computed under paragraph (1) that is paid to a surviving spouse shall be reduced by the amount of dependency and indemnity compensation to which the surviving spouse is entitled under section 1311(a) of title 38. Any such reduction shall be effective on the date of the commencement of the period of payment of such compensation under title 38.

(3) Servicemembers not yet granted retired pay.—In the case of an annuity provided by reason of the service of a member described in clause (ii) or (iii) of section 1448(d)(1)(A) of this title who first became a member of a uniformed service before September 8, 1980, the retired pay to which the member would have been entitled when he died shall be determined for purposes of paragraph (1) based upon the rate of basic pay in effect at the time of death for the grade in which the member was serving at the time of death, unless (as determined by the Secretary concerned) the member would have been entitled to be retired in a higher grade.

(4) Rate of pay to be used in computing annuity.—In the case of an annuity paid under section 1448(f) of this title by reason of the service of a person who first became a member of a uniformed service before September 8, 1980, the retired pay of the person providing the annuity shall for the purposes of paragraph (1) be computed on the basis of the rates of basic pay in effect on the effective date of the annuity.

(d) Reduction of Annuities at Age 62.—

(1) Reduction required.—The annuity of a person whose annuity is computed under subparagraph (A) of subsection (a)(1), (a)(2), or (c)(1) shall be reduced on the first day of the month after the month in which the person becomes 62 years of age.

(2) Amount of annuity as reduced.—

(A) Computation of annuity.—Except as provided in subparagraph (B), the reduced amount of the annuity shall be the amount of the annuity that the person would be receiving on that date if the annuity had initially been computed under subparagraph (B) of that subsection.

(B) Savings provision for beneficiaries eligible for social security offset computation.—In the case of a person eligible to have an annuity computed under subsection (e) and for whom, at the time the person becomes 62 years of age, the annuity computed with a reduction under subsection (e)(3) is more favorable than the annuity with a reduction described in subparagraph (A), the reduction in the annuity shall be computed in the same manner as a reduction under subsection (e)(3).

(e) Savings Provision for Certain Beneficiaries.—

(1) Persons covered.—The following beneficiaries under the Plan are eligible to have an annuity under the Plan computed under this subsection:

(A) A beneficiary receiving an annuity under the Plan on October 1, 1985, as the surviving spouse or former spouse of the person providing the annuity.

(B) A spouse or former spouse beneficiary of a person who on October 1, 1985-

(i) was a participant in the Plan;

(ii) was entitled to retired pay or was qualified for that pay except that he had not applied for and been granted that pay; or

(iii) would have been eligible for reserve-component retired pay but for the fact that he was under 60 years of age.

(2) Amount of annuity.—Subject to paragraph (3), an annuity computed under this subsection is determined as follows:

(A) Standard annuity.—In the case of the beneficiary of a standard annuity, the annuity shall be the amount equal to 55 percent of the base amount.

(B) Reserve-component annuity.—In the case of the beneficiary of a reserve-component annuity, the annuity shall be the percentage of the base amount that-

(i) is less than 55 percent; and

(ii) is determined under subsection (f).

(C) Beneficiaries of persons dying during a period of special eligibility for sbp.—In the case of the beneficiary of an annuity under section 1448(d) or 1448(f) of this title, the annuity shall be the amount equal to 55 percent of the retired pay of the person providing the annuity (as that pay is determined under subsection (c)).

(3) Social security offset.—An annuity computed under this subsection shall be reduced by the lesser of the following:

(A) Social security computation.—The amount of the survivor benefit, if any, to which the surviving spouse (or the former spouse, in the case of a former spouse beneficiary who became a former spouse under a divorce that became final after November 29, 1989) would be entitled under title II of the Social Security Act (42 U.S.C. 401 et seq.) based solely upon service by the person concerned as described in section 210(l)(1) of such Act (42 U.S.C. 410(l)(1)) and calculated assuming that the person concerned lives to age 65.

(B) Maximum amount of reduction.—40 percent of the amount of the monthly annuity as determined under paragraph (2).

(4) Special rules for social security offset computation.—

(A) Treatment of deductions made on account of work.—For the purpose of paragraph (3), a surviving spouse (or a former spouse, in the case of a person who becomes a former spouse under a divorce that becomes final after November 29, 1989) shall not be considered as entitled to a benefit under title II of the Social Security Act (42 U.S.C. 401 et seq.) to the extent that such benefit has been offset by deductions under section 203 of such Act (42 U.S.C. 403) on account of work.

(B) Treatment of certain periods for which social security refunds are made.—In the computation of any reduction made under paragraph (3), there shall be excluded any period of service described in section 210(l)(1) of the Social Security Act (42 U.S.C. 410(l)(1))-

(i) which was performed after December 1, 1980; and

(ii) which involved periods of service of less than 30 continuous days for which the person concerned is entitled to receive a refund under section 6413(c) of the Internal Revenue Code of 1986 of the social security tax which the person had paid.

(f) Determination of Percentages Applicable to Computation of Reserve-Component Annuities.—The percentage to be applied in determining the amount of an annuity computed under subsection (a)(2), (b)(2), or (e)(2)(B) shall be determined under regulations prescribed by the Secretary of Defense. Such regulations shall be prescribed taking into consideration the following:

(1) The age of the person electing to provide the annuity at the time of such election.

(2) The difference in age between such person and the beneficiary of the annuity.

(3) Whether such person provided for the annuity to become effective (in the event he died before becoming 60 years of age) on the day after his death or on the 60th anniversary of his birth.

(4) Appropriate group annuity tables.

(5) Such other factors as the Secretary considers relevant.

(g) Adjustments to Annuities.—

(1) Periodic adjustments for cost-of-living.—

(A) Increases in annuities when retired pay increased.—Whenever retired pay is increased under section 1401a of this title (or any other provision of law), each annuity that is payable under the Plan shall be increased at the same time.

(B) Percentage of increase.—The increase shall, in the case of any annuity, be by the same percent as the percent by which the retired pay of the person providing the annuity would have been increased at such time if the person were alive (and otherwise entitled to such pay).

(C) Certain reductions to be disregarded.—The amount of the increase shall be based on the monthly annuity payable before any reduction under section 1450(c) of this title or under subsection (c)(2).

(2) Rounding down.—The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(h) Adjustments to Base Amount.—

(1) Periodic adjustments for cost-of-living.—

(A) Increases in base amount when retired pay increased.—Whenever retired pay is increased under section 1401a of this title (or any other provision of law), the base amount applicable to each participant in the Plan shall be increased at the same time.

(B) Percentage of increase.—The increase shall be by the same percent as the percent by which the retired pay of the participant is so increased.

(2) Recomputation at age 62.—When the retired pay of a person who first became a member of a uniformed service on or after August 1, 1986, and who is a participant in the Plan is recomputed under section 1410 of this title upon the person's becoming 62 years of age, the base amount applicable to that person shall be recomputed (effective on the effective date of the recomputation of such retired pay under section 1410 of this title) so as to be the amount equal to the amount of the base amount that would be in effect on that date if increases in such base amount under paragraph (1) had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(3) Disregarding of retired pay reductions for retirement of certain members before 30 years of service.—Computation of a member's retired pay for purposes of this section shall be made without regard to any reduction under section 1409(b)(2) of this title.

(i) Recomputation of Annuity for Certain Beneficiaries.—In the case of an annuity under the Plan which is computed on the basis of the retired pay of a person who would have been entitled to have that retired pay recomputed under section 1410 of this title upon attaining 62 years of age, but who dies before attaining that age, the annuity shall be recomputed, effective on the first day of the first month beginning after the date on which the member or former member would have attained 62 years of age, so as to be the amount equal to the amount of the annuity that would be in effect on that date if increases under subsection (h)(1) in the base amount applicable to that annuity to the time of the death of the member or former member, and increases in such annuity under subsection (g)(1), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

§1452. Reduction in retired pay

(a) Spouse and Former Spouse Annuities.—

(1) Required reduction in retired pay.—Except as provided in subsection (b), the retired pay of a participant in the Plan who is providing spouse coverage (as described in paragraph (5)) shall be reduced as follows:

(A) Standard annuity.—If the annuity coverage being provided is a standard annuity, the reduction shall be as follows:

(i) Disability and nonregular service retirees.—In the case of a person who is entitled to retired pay under chapter 61 or chapter 1223 of this title, the reduction shall be in whichever of the alternative reduction amounts is more favorable to that person.

(ii) Members as of enactment of flat-rate reduction.—In the case of a person who first became a member of a uniformed service before March 1, 1990, the reduction shall be in whichever of the alternative reduction amounts is more favorable to that person.

(iii) New entrants after enactment of flat-rate reduction.—In the case of a person who first becomes a member of a uniformed service on or after March 1, 1990, and who is entitled to retired pay under a provision of law other than chapter 61 or chapter 1223 of this title, the reduction shall be in an amount equal to 6½ percent of the base amount.

(iv) Alternative reduction amounts.—For purposes of clauses (i) and (ii), the alternative reduction amounts are the following:

(I) Flat-rate reduction.—An amount equal to 6½ percent of the base amount.

(II) Amount under pre-flat-rate reduction.—An amount equal to 2½ percent of the first $337 (as adjusted after November 1, 1989, under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount.

(B) Reserve-component annuity.—If the annuity coverage being provided is a reserve-component annuity, the reduction shall be in whichever of the following amounts is more favorable to that person:

(i) Flat-rate reduction.—An amount equal to 6½ percent of the base amount plus an amount determined in accordance with regulations prescribed by the Secretary of Defense as a premium for the additional coverage provided through reserve-component annuity coverage under the Plan.

(ii) Amount under pre-flat-rate reduction.—An amount equal to 2½ percent of the first $337 (as adjusted after November 1, 1989, under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount plus an amount determined in accordance with regulations prescribed by the Secretary of Defense as a premium for the additional coverage provided through reserve-component annuity coverage under the Plan.

(2) Additional reduction for child coverage.—If there is a dependent child as well as a spouse or former spouse, the amount prescribed under paragraph (1) shall be increased by an amount prescribed under regulations of the Secretary of Defense.

(3) No reduction when no beneficiary.—The reduction in retired pay prescribed by paragraph (1) shall not be applicable during any month in which there is no eligible spouse or former spouse beneficiary.

(4) Periodic adjustments.—

(A) Adjustments for increases in rates of basic pay.—Whenever there is an increase in the rates of basic pay of members of the uniformed services effective on or after October 1, 1985, the amounts under paragraph (1) with respect to which the percentage factor of 2½ is applied shall be increased by the overall percentage of such increase in the rates of basic pay. The increase under the preceding sentence shall apply only with respect to persons whose retired pay is computed based on the rates of basic pay in effect on or after the date of such increase in rates of basic pay.

(B) Adjustments for retired pay colas.—In addition to the increase under subparagraph (A), the amounts under paragraph (1) with respect to which the percentage factor of 2½ is applied shall be further increased at the same time and by the same percentage as an increase in retired pay under section 1401a of this title effective on or after October 1, 1985. Such increase under the preceding sentence shall apply only with respect to a person who initially participates in the Plan on a date which is after both the effective date of such increase under section 1401a and the effective date of the rates of basic pay upon which that person's retired pay is computed.

(5) Spouse coverage described.—For the purposes of paragraph (1), a participant in the Plan who is providing spouse coverage is a participant who-

(A) has (i) a spouse or former spouse, or (ii) a spouse or former spouse and a dependent child; and

(B) has not elected to provide an annuity to a person designated by him under section 1448(b)(1) of this title or, having made such an election, has changed his election in favor of his spouse under section 1450(f) of this title.

(b) Child-Only Annuities.—

(1) Required reduction in retired pay.—The retired pay of a participant in the Plan who is providing child-only coverage (as described in paragraph (4)) shall be reduced by an amount prescribed under regulations by the Secretary of Defense.

(2) No reduction when no child.—There shall be no reduction in retired pay under paragraph (1) for any month during which the participant has no eligible dependent child.

(3) Special rule for certain rcsbp participants.—In the case of a participant in the Plan who is participating in the Plan under an election under section 1448(a)(2)(B) of this title and who provided child-only coverage during a period before the participant becomes entitled to receive retired pay, the retired pay of the participant shall be reduced by an amount prescribed under regulations by the Secretary of Defense to reflect the coverage provided under the Plan during the period before the participant became entitled to receive retired pay. A reduction under this paragraph is in addition to any reduction under paragraph (1) and is made without regard to whether there is an eligible dependent child during a month for which the reduction is made.

(4) Child-only coverage defined.—For the purposes of this subsection, a participant in the Plan who is providing child-only coverage is a participant who has a dependent child and who-

(A) does not have an eligible spouse or former spouse; or

(B) has a spouse or former spouse but has elected to provide an annuity for dependent children only.

(c) Reduction for Insurable Interest Coverage.—

(1) Required reduction in retired pay.—The retired pay of a person who has elected to provide an annuity to a person designated by him under section ~~1450(a)(4)~~ 1450(a)(5) of this title shall be reduced as follows:

(A) Standard annuity.—In the case of a person providing a standard annuity, the reduction shall be by 10 percent plus 5 percent for each full five years the individual designated is younger than that person.

(B) Reserve component annuity.—In the case of a person providing a reserve-component annuity, the reduction shall be by an amount prescribed under regulations of the Secretary of Defense.

(2) Limitation on total reduction.—The total reduction under paragraph (1) may not exceed 40 percent.

(3) Duration of reduction.—The reduction in retired pay prescribed by this subsection shall continue during the lifetime of the person designated under section ~~1450(a)(4)~~ 1450(a)(5) of this title or until the person receiving retired pay changes his election under section 1450(f) of this title.

(4) Rule for computation.—Computation of a member's retired pay for purposes of this subsection shall be made without regard to any reduction under section 1409(b)(2) of this title.

(5) Rule for designation of new insurable interest beneficiary following death of original beneficiary.—The Secretary of Defense shall prescribe in regulations premiums which a participant making an election under section 1448(b)(1)(G) of this title shall be required to pay for participating in the Plan pursuant to that election. The total amount of the premiums to be paid by a participant under the regulations shall be equal to the sum of the following:

(A) The total additional amount by which the retired pay of the participant would have been reduced before the effective date of the election if the original beneficiary (i) had not died and had been covered under the Plan through the date of the election, and (ii) had been the same number of years younger than the participant (if any) as the new beneficiary designated under the election.

(B) Interest on the amounts by which the retired pay of the participant would have been so reduced, computed from the dates on which the retired pay would have been so reduced at such rate or rates and according to such methodology as the Secretary of Defense determines reasonable.

(C) Any additional amount that the Secretary determines necessary to protect the actuarial soundness of the Department of Defense Military Retirement Fund against any increased risk for the fund that is associated with the election.

(d) Deposits To Cover Periods When Retired Pay Not Paid.—

(1) Required deposits.—If a person who has elected to participate in the Plan has been awarded retired pay and is not entitled to that pay for any period, that person must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period.

(2) Deposits not required when participant on active duty.—Paragraph (1) does not apply to a person with respect to any period when that person is on active duty under a call or order to active duty for a period of more than 30 days.

(e) Deposits Not Required for Certain Participants in CSRS and FERS.—When a person who has elected to participate in the Plan waives that person's retired pay for the purposes of subchapter III of chapter 83 of title 5 or chapter 84 of such title, that person shall not be required to make the deposit otherwise required by subsection (d) as long as that waiver is in effect unless, in accordance with section 8339(j) or 8416(a) of title 5, that person has notified the Office of Personnel Management that he does not desire a spouse surviving him to receive an annuity under section 8341(b) or 8442(a) of title 5.

(f) Refunds of Deductions Not Allowed.—

(1) General rule.—A person is not entitled to refund of any amount deducted from retired pay under this section.

(2) Exceptions.—Paragraph (1) does not apply-

(A) in the case of a refund authorized by section 1450(e) of this title; or

(B) in case of a deduction made through administrative error.

(g) Discontinuation of Participation by Participants Whose Surviving Spouses Will Be Entitled to DIC.—

(1) Discontinuation.—

(A) Conditions.—Notwithstanding any other provision of this subchapter but subject to paragraphs (2) and (3), a person who has elected to participate in the Plan and who is suffering from a service-connected disability rated by the Secretary of Veterans Affairs as totally disabling and has suffered from such disability while so rated for a continuous period of 10 or more years (or, if so rated for a lesser period, has suffered from such disability while so rated for a continuous period of not less than 5 years from the date of such person's last discharge or release from active duty) may discontinue participation in the Plan by submitting to the Secretary concerned a request to discontinue participation in the Plan.

(B) Effective date.—Participation in the Plan of a person who submits a request under subparagraph (A) shall be discontinued effective on the first day of the first month following the month in which the request under subparagraph (A) is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired pay on account of

participation in the Plan or, in the case of a person who has been required to make deposits in the Treasury on account of participation in the Plan, such person may discontinue making such deposits effective on such date.

(C) Form for request for discontinuation.—Any request under this paragraph to discontinue participation in the Plan shall be in such form and shall contain such information as the Secretary concerned may require by regulation.

(2) Consent of beneficiaries required.—A person described in paragraph (1) may not discontinue participation in the Plan under such paragraph without the written consent of the beneficiary or beneficiaries of such person under the Plan.

(3) Information on plan to be provided by secretary concerned.—

(A) Information to be provided promptly to participant.—The Secretary concerned shall furnish promptly to each person who files a request under paragraph (1) to discontinue participation in the Plan a written statement of the advantages of participating in the Plan and the possible disadvantages of discontinuing participation.

(B) Right to withdraw discontinuation request.—A person may withdraw a request made under paragraph (1) if it is withdrawn within 30 days after having been submitted to the Secretary concerned.

(4) Refund of deductions from retired pay.—Upon the death of a person described in paragraph (1) who discontinued participation in the Plan in accordance with this subsection, any amount deducted from the retired pay of that person under this section shall be refunded to the person's surviving spouse.

(5) Resumption of participation in plan.—

(A) Conditions for resumption.—A person described in paragraph (1) who discontinued participation in the Plan may elect to participate again in the Plan if-

(i) after having discontinued participation in the Plan the Secretary of Veterans Affairs reduces that person's service-connected disability rating to a rating of less than total; and

(ii) that person applies to the Secretary concerned, within such period of time after the reduction in such person's service-connected disability rating has been made as the Secretary concerned may prescribe, to again participate in the Plan and includes in such application such information as the Secretary concerned may require.

(B) Effective date of resumed coverage.—Such person's participation in the Plan under this paragraph is effective beginning on the first day of the month after the month in which the Secretary concerned receives the application for resumption of participation in the Plan.

(C) Resumption of contributions.—When a person elects to participate in the Plan under this paragraph, the Secretary concerned shall begin making reductions in that person's retired pay, or require such person to make deposits in the Treasury under

subsection (d), as appropriate, effective on the effective date of such participation under subparagraph (B).

(h) Increases in Reduction With Increases in Retired Pay.—

(1) General rule.—Whenever retired pay is increased under section 1401a of this title (or any other provision of law), the amount of the reduction to be made under subsection (a) or (b) in the retired pay of any person shall be increased at the same time and by the same percentage as such retired pay is so increased.

(2) Coordination when payment of increase in retired pay is delayed by law.—

(A) In general.—Notwithstanding paragraph (1), when the initial payment of an increase in retired pay under section 1401a of this title (or any other provision of law) to a person is for a month that begins later than the effective date of that increase by reason of the application of subsection (b)(2)(B) of such section (or section 631(b) of Public Law 104–106 (110 Stat. 364)), then the amount of the reduction in the person's retired pay shall be effective on the date of that initial payment of the increase in retired pay rather than the effective date of the increase in retired pay.

(B) Delay not to affect computation of annuity.—Subparagraph (A) may not be construed as delaying, for purposes of determining the amount of a monthly annuity under section 1451 of this title, the effective date of an increase in a base amount under subsection (h) of such section from the effective date of an increase in retired pay under section 1401a of this title to the date on which the initial payment of that increase in retired pay is made in accordance with subsection (b)(2)(B) of such section.

(i) Recomputation of Reduction Upon Recomputation of Retired Pay.—Whenever the retired pay of a person who first became a member of a uniformed service on or after August 1, 1986, and who is a participant in the Plan is recomputed under section 1410 of this title upon the person's becoming 62 years of age, the amount of the reduction in such retired pay under this section shall be recomputed (effective on the effective date of the recomputation of such retired pay under section 1410 of this title) so as to be the amount equal to the amount of such reduction that would be in effect on that date if increases in such retired pay under section 1401a(b) of this title, and increases in reductions in such retired pay under subsection (h), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(j) Coverage Paid Up at 30 Years and Age 70.—Effective October 1, 2008, no reduction may be made under this section in the retired pay of a participant in the Plan for any month after the later of-

(1) the 360th month for which the participant's retired pay is reduced under this section; and

(2) the month during which the participant attains 70 years of age.

Subtitle E—Other Provisions Related to Retired Pay

Section 641 would provide Reserve Component (RC) members the same retirement age eligibility benefits regardless of their volunteer status to perform missions in support of a combatant command. RC members may have their retirement eligibility age reduced when they volunteer to perform active duty under 10 U.S.C. 12301(d). This proposal will allow RC members who are involuntarily activated under 10 U.S.C. 12304b to receive the same benefits as those RC members who have volunteered to perform duty in support of a combatant command.

Currently, two RC members who are serving side-by-side on active duty in support of a combatant command may receive different retirement age eligibility benefits. The RC member who volunteered for the duty (12301(d)) may have their retirement age eligibility reduced by three months for each aggregate of 90 days of duty performed in any fiscal year. The RC member who was involuntarily activated (12304b) for the same duty, may not have their retirement age eligibility reduced.

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 number of personnel affected is a projection based on Fiscal Year (FY) 2016 Active Duty for Operational Support (ADOS) activations in support of contingency operations and FY 2016 12304b programming. In FY 2016, a total of 6711 RC Service members are expected to be activated for ADOS. This budget methodology makes the following assumptions:

1. The Declaration of National Emergency will continue through FY 2024 due to the emerging ISIS threat and increasing global instability. The 10 U.S.C. 12302 authority will be available to activate the RC through FY 2021 and probably through FY 2024.

2. The Services provided 12304b projections for FY 2017-2021 and expect to maintain a total steady state of nearly 3000 12304b activations to sustain the preprogramed operations tempo from FY2017-2021.

This proposal used the 12304b activation data from FY 2014 through FY 2024 in the following table:

12304b Activation Projections FY14-FY24											
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**
Air Force	0	1182	1076	1130	1130	1130	1130	1130	1130	1130	1130
Army	962	1007	1008	1010	1010	1010	1010	1010	1010	1010	1010
Total	962	2189	2084	2140	2140	2140	2140	2140	2140	2140	2140

The DoD Office of the Actuary used a 10-year look from FY 2014 to FY 2024 to compute an estimated cost. The cost for the Services is the Retired Pay Accrual contribution paid to the Military Retirement Trust Fund. The actuaries are unsure if this proposal will have a cost, but felt that the estimated costs in the table below should be included in good faith. For example, for budgeting purposes, the early retirement eligibility authorization effectively reduces the budgeted RC retirement age from 60 to 58. Extending early retirement eligibility to 12304b active duty may not move the needle enough to effectively reduce the estimated early retirement age from 58 years to 57 years and 11 months.

The DoD Office of the Actuary states "if [the ULB is] enacted, actual results/costs implemented by the DoD Board of Actuaries may differ from those shown in this estimate. They may decide to not reflect costs until actual experience emerges, or decide the impact is below the valuation's rounding thresholds." For example, the actuaries estimate the Retired Pay Accrual contribution of $5.5 million for the Army in FY 2021 for the range of 1,000 – 10,000 man-years worth of 12304b activations.

The 5 years of cost estimated required for the ULB submission (FY 2017-FY 2021) are included in the table below.

The attached actuary excel spreadsheet displays the assumptions and the costs through FY24. Actuary costs assume 14 percent of new entrants to the part-time drilling reserves become eligible for a reserve non-disability retirement. 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	1.15	1.15	1.20	1.25	1.25	Military Personnel, Air Force	01	010	
Army	5.00	5.10	5.20	5.40	5.50	Military Personnel, Army	01/02	05/06	
Navy does not intend to use this authority, which would have been funded in the following account: Military Personnel, Navy. Marine Corps does not intend to use this authority, which would have been funded in the following account: Military Personnel, Marine Corps.									
Total	6.15	6.25	6.40	6.65	6.75				

NUMBER OF PERSONNEL AFFECTED					
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**
Air Force	565	565	565	565	565
Army	1010	1010	1010	1010	1010

Total	1575	1575	1575	1575	1575

Changes to Existing Law: This proposal would make the following change to section 12731(f)(2)(B)(i) of title 10, United States Code.

Title 10, United States Code

§ 12731. Age and service requirements

* * * * *

(f)(1) Subject to paragraph (2), the eligibility age for purposes of subsection (a)(1) is 60 years of age.

(2)(A) In the case of a person who as a member of the Ready Reserve serves on active duty or performs active service described in subparagraph (B) after January 28, 2008, the eligibility age for purposes of subsection (a)(1) shall be reduced, subject to subparagraph (C), below 60 years of age by three months for each aggregate of 90 days on which such person serves on such active duty or performs such active service in any fiscal year after January 28, 2008, or in any two consecutive fiscal years after September 30, 2014. A day of duty may be included in only one aggregate of 90 days for purposes of this subparagraph.

(B)(i) Service on active duty described in this subparagraph is service on active duty pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) or under section 12301(d) **or 12304b** of this title. Such service does not include service on active duty pursuant to a call or order to active duty under section 12310 of this title.

(ii) Active service described in this subparagraph is also service under a call to active service authorized by the President or the Secretary of Defense under section 502(f) of title 32 for purposes of responding to a national emergency declared by the President or supported by Federal funds.

(iii) If a member described in subparagraph (A) is wounded or otherwise injured or becomes ill while serving on active duty pursuant to a call or order to active duty under a provision of law referred to in the first sentence of clause (i) or in clause (ii), and the member is then ordered to active duty under section 12301(h)(1) of this title to receive medical care for the wound, injury, or illness, each day of active duty under that order for medical care shall be treated as a continuation of the original call or order to active duty for purposes of reducing the eligibility age of the member under this paragraph.

(iv) Service on active duty described in this subparagraph is also service on active duty pursuant to a call or order to active duty authorized by the Secretary of Homeland Security under section 712 of title 14 for purposes of emergency augmentation of the Regular Coast Guard forces.

(C) The eligibility age for purposes of subsection (a)(1) may not be reduced below 50 years of age for any person under subparagraph (A).

(3) The Secretary concerned shall periodically notify each member of the Ready Reserve described by paragraph (2) of the current eligibility age for retired pay of such member under this section, including any reduced eligibility age by reason of the operation of that paragraph. Notice shall be provided by such means as the Secretary considers appropriate taking into account the cost of provision of notice and the convenience of members.

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.

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§ 1075. TRICARE health plan options

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

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§ 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.

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

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~~**(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-	Maximum Amount for all Others

		7 through 0-10	
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 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

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 persons is:*	*The applicable percentage for an individual 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 Maintenance	01	010	0807723
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, including certificate and certification and undergraduate degree programs, 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	06	098	0605807F

						and Evaluation, Air Force			
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 <u>implementation</u> plans <u>and analyses</u> ~~and business case analyses~~ supporting any significant ~~modification of~~ <u>changes to</u> 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 <u>not</u>, 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.~~

Section 805 would add a new chapter 164 to title 10, United States Code, to establish an effective program fraud civil remedy that may be used by the Department of Defense (DoD) or the National Aeronautics and Space Agency (NASA) to redress fraud in DoD and NASA procurement programs and acquisitions. This administrative remedy is a non-judicial remedy that would permit DoD and NASA (subject to Department of Justice approval) to impose penalties and assessments on contractors that make false claims and statements to DoD and NASA. The proposal creates a remedy for DoD and NASA to use in lieu of the existing Program Fraud Civil Remedies Act (chapter 38 of title 31, United States Code). DoD has rarely used the existing legal authority because it imposes requirements that DoD cannot readily meet (for example, the need for administrative law judges to resolve factual disputes – DoD does not have ready access to administrative law judges and would need to acquire services from another agency on a reimbursable basis), and the procedures are cumbersome to the point of making it impractical for DoD or the military departments to pursue a remedy under title 31.

This legislative proposal streamlines and simplifies the cumbersome, multi-tiered approach set forth in title 31, while preserving its standards of review and providing contractors with due process and judicial review. The proposal would vest DoD, military department, and NASA suspending and debarring officials with the authority to impose administrative assessments and penalties similar to those permitted under title 31. DoD, military department, and NASA suspending and debarring officials execute the authorities at Federal Acquisition Regulation Subpart 9.4 (48 C.F.R. Subpart 9.4), and Defense Federal Acquisition Regulation Supplement Subpart 209.4 (48 C.F.R. Subpart 209.4). They serve in a quasi-judicial capacity, with responsibility for taking administrative action to suspend or debar a contractor when necessary to protect the government's interest. Contractors that are suspended or debarred are rendered ineligible to compete for or receive federal contracts or subcontracts, generally for a term of three years.

The proposed legislation eliminates many of the procedural requirements that impede DoD and NASA's use of the authority in title 31, including the exclusive use of administrative law judges to resolve factual disputes, without requiring additional resources to use the authority in title 31. The streamlined procedures set forth in the proposal afford contractors with adequate due process by establishing a legal process and related protections similar to those granted in agency suspensions and debarments, including review under the Administrative Procedure Act (Chapter 7 of Title 5, United States Code). The proposal imposes a $500,000 ceiling on false claims, singularly or combined, that can be pursued against a contractor using this administrative remedy, although, as with the authority in title 31, the assessment imposed may be doubled (for a maximum assessment of $1,000,000). As with the authority in title 31, the proposal authorizes the imposition of penalties of $5000 for each false claim or false statement, and there is no limit on the total number of penalties that can be imposed.

Although suspending and debarring officials would be vested with the authority to impose administrative assessments and penalties similar to those permitted under title 31, the

important distinction between penalties to punish misconduct and suspension and debarment as a tool to protect the government from harm would be preserved. For example, the remedies coordination official, required by DoD Instruction 7050.05, will continue to make decisions regarding which remedies to pursue in a given case.

There is a substantial need for this fraud-fighting authority. Currently, the Department of Justice is unable to pursue many relatively low-dollar DoD and NASA-related fraud cases due to limited resources. This leaves a gap in remedial coverage, allowing contractors that engage in relatively low dollar fraud to escape civil remedies that otherwise would have given the United States Government the opportunity to recover damages and impose penalties for the contractors' misconduct. Of equal importance, as discussed above, the proposed legislation creates an administrative fraud remedy that can be readily used by DoD and NASA – a critical feature, considering that DoD is the largest purchaser of products and services in the United States Government. Additionally, the proposed legislation will create a fraud-fighting administrative remedy that could serve as a model that could assist the broader U.S. Government in determining whether this simplified and streamlined program fraud civil remedy is appropriate for use by all federal agencies.

Further, the 2010 Report to Congress by the DOD Panel on Contracting Integrity recommended this change to amend the Program Fraud Civil Remedies Act of 1986. This proposal was supported by the Panel senior leaders from the military departments and Defense Agency representatives.

Budget Implications: This proposal creates a procurement fraud remedy that will produce a positive return to the United States Treasury, and would not require new resources to implement, as described below. The authority created by the proposal can be administered with the existing workforce in the DoD agencies and military departments, using the existing suspending and debarring officials and their respective staffs. It is critical to note that the authority established under the proposed legislation is discretionary; it does not mandate that defense agencies or the military departments pursue every possible action. Rather, as with the current suspension and debarment process, which is also a discretionary process, DoD and military department officials must exercise discretion in pursuing recoveries under the proposed legislation. As with the current suspension and debarment process, that exercise of discretion will have to factor in a host of considerations, including the severity of the alleged misconduct, the strength of the evidence, the appropriateness of the remedy, and whether the suspending and debarring official has sufficient resources – including staff – to pursue the administrative remedy. As a final consideration, much of the effort necessary to pursue a suspension or debarment is the same effort required to build a case under the proposed program. By working these matters concurrently, there should be limited additional work imposed on suspending and debarring officials and their staffs.

Changes to Existing Law: This proposal would add a new chapter 164 to title 10, United States Code. The new chapter is set out in the legislative text of the proposal, above.

The proposal would amend 31 U.S.C. 3801 as set forth below. (For the information of reviewers, the entire text of chapter 38 of title 31 United States Code, is set forth.)

TITLE 31, UNITED STATES CODE

* * * * * *

CHAPTER 38— ADMINISTRATIVE REMEDIES FOR FALSE CLAIMS AND STATEMENTS

§ 3801. Definitions

(a) For purposes of this chapter—

(1) "authority" means—

(A) an executive department (other than the Department of Defense);

~~(B) a military department;~~

(~~C~~B) an establishment (as such term is defined in section 11(2) of the Inspector General Act of 1978) which is not an executive department (other than the National Aeronautics and Space Administration);

(~~D~~C) the United States Postal Service;

(~~E~~D) the National Science Foundation; and

(~~F~~E) a designated Federal entity (as such term is defined under section 8G(a)(2) of the Inspector General Act of 1978);

(2) "authority head" means—

(A) the head of an authority; or

(B) an official or employee of the authority designated, in regulations promulgated by the head of the authority to act on behalf of the head of the authority;

(3) "claim" means any request, demand, or submission—

(A) made to an authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(B) made to a recipient of property, services, or money from an authority or to a party to a contract with an authority—

(i) for property or services if the United States—

(I) provided such property or services;

(II) provided any portion of the funds for the purchase of such property or services; or

(III) will reimburse such recipient or party for the purchase of such property or services; or

(ii) for the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(I) provided any portion of the money requested or demanded; or

(II) will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(C) made to an authority which has the effect of decreasing an obligation

to pay or account for property, services, or money,

except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1986;

(4) "investigating official" means an individual who—

(A)(i) in the case of an authority in which an Office of Inspector General is established by the Inspector General Act of 1978 or by any other Federal law, is the Inspector General of that authority or an officer or employee of such Office designated by the Inspector General;

(ii) in the case of an authority in which an Office of Inspector General is not established by the Inspector General Act of 1978 or by any other Federal law, is an officer or employee of the authority designated by the authority head to conduct investigations under section 3803(a)(1) of this title; or

(iii) in the case of a military department, is the Inspector General of the Department of Defense or an officer or employee of the Office of Inspector General of the Department of Defense who is designated by the Inspector General; and

(B) who, if a member of the Armed Forces of the United States on active duty, is serving in grade O-7 or above or, if a civilian employee, is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule;

(5) "knows or has reason to know" for purposes of establishing liability under section 3802, means that a person, with respect to a claim or statement—

(A) has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(B) acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(C) acts in reckless disregard of the truth or falsity of the claim or statement,

and no proof of specific intent to defraud is required;

(6) "person" means any individual, partnership, corporation, association, or private organization;

(7) "presiding officer" means—

(A) in the case of an authority to which the provisions of subchapter II of chapter 5 of title 5 apply, an administrative law judge appointed in the authority pursuant to section 3105 of such title or detailed to the authority pursuant to section 3344 of such title; or

(B) in the case of an authority to which the provisions of such subchapter do not apply, an officer or employee of the authority who—

(i) is selected under chapter 33 of title 5 pursuant to the competitive examination process applicable to administrative law judges;

(ii) is appointed by the authority head to conduct hearings under section 3803 of this title;

(iii) is assigned to cases in rotation so far as practicable;

(iv) may not perform duties inconsistent with the duties and responsibilities of a presiding officer;

(v) is entitled to pay prescribed by the Office of Personnel Management independently of ratings and recommendations made by the authority and in accordance with chapter 51 of such title and subchapter III of chapter 53 of such title;

(vi) is not subject to performance appraisal pursuant to chapter 43 of such title; and

(vii) may be removed, suspended, furloughed, or reduced in grade or pay only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing by such Board;

(8) "reviewing official" means any officer or employee of an authority—

(A) who is the designated by the authority head to make the determination required under section 3803(a)(2) of this title;

(B) who, if a member of the Armed Forces of the United States on active duty, is serving in grade O-7 or above or, if a civilian employee, is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule; and

(C) who is—

(i) not subject to supervision by, or required to report to, the investigating official; and

(ii) not employed in the organizational unit of the authority in which the investigating official is employed; and

(9) "statement" means any representation, certification, affirmation, document, record, or an accounting or bookkeeping entry made—

(A) with respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(B) with respect to (including relating to eligibility for)—

(i) a contract with, or a bid or proposal for a contract with an authority; or

(ii) a grant, loan, or benefit from,

an authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit,

except that such term does not include any statement made in any return of tax imposed by the Internal Revenue Code of 1986.

(b) For purposes of paragraph (3) of subsection (a)—

(1) each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim;

(2) each claim for property, services, or money is subject to this chapter regardless of whether such property, services, or money is actually delivered or paid; and

(3) a claim shall be considered made, presented, or submitted to an authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity including any State or political subdivision thereof acting for or on behalf of such authority, recipient, or party.

(c) For purposes of paragraph (9) of subsection (a)—

(1) each written representation, certification, or affirmation constitutes a separate statement; and

(2) a statement shall be considered made, presented, or submitted to an authority when such statement is actually made to an agent, fiscal intermediary, or other entity including any State or political subdivision thereof acting for or on behalf of such authority.

§ 3802. False claims and statements; liability

(a)(1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know—

(A) is false, fictitious, or fraudulent;

(B) includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(C) includes or is supported by any written statement that—

(i) omits a material fact;

(ii) is false, fictitious, or fraudulent as a result of such omission; and

(iii) is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or

(D) is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such claim. Except as provided in paragraph (3) of this subsection, such person shall also be subject to an assessment, in lieu of damages sustained by the United States because of such claim, of not more than twice the amount of such claim, or the portion of such claim, which is determined under this chapter to be in violation of the preceding sentence.

(2) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that—

(A) the person knows or has reason to know—

(i) asserts a material fact which is false, fictitious, or fraudulent; or

(ii)(I) omits a material fact; and

(II) is false, fictitious, or fraudulent as a result of such omission;

(B) in the case of a statement described in clause (ii) of subparagraph (A), is a statement in which the person making, presenting, or submitting such statement has a

duty to include such material fact; and

(C) contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such statement.

(3) An assessment shall not be made under the second sentence of paragraph (1) with respect to a claim if payment by the Government has not been made on such claim.

(b)(1) Except as provided in paragraphs (2) and (3) of this subsection—

(A) a determination under section 3803(a)(2) of this title that there is adequate evidence to believe that a person is liable under subsection (a) of this section; or

(B) a determination under section 3803 of this title that a person is liable under subsection (a) of this section,

may provide the authority with grounds for commencing any administrative or contractual action against such person which is authorized by law and which is in addition to any action against such person under this chapter.

(2) A determination referred to in paragraph (1) of this subsection may be used by the authority, but shall not require such authority, to commence any administrative or contractual action which is authorized by law.

(3) In the case of an administrative or contractual action to suspend or debar any person who is eligible to enter into contracts with the Federal Government, a determination referred to in paragraph (1) of this subsection shall not be considered as a conclusive determination of such person's responsibility pursuant to Federal procurement laws and regulations.

§ 3803. Hearing and determinations

(a)(1) The investigating official of an authority may investigate allegations that a person is liable under section 3802 of this title and shall report the findings and conclusions of such investigation to the reviewing official of the authority. The preceding sentence does not modify any responsibility of an investigating official to report violations of criminal law to the Attorney General.

(2) If the reviewing official of an authority determines, based upon the report of the investigating official under paragraph (1) of this subsection, that there is adequate evidence to believe that a person is liable under section 3802 of this title, the reviewing official shall transmit to the Attorney General a written notice of the intention of such official to refer the allegations of such liability to a presiding officer of such authority. Such notice shall include—

(A) a statement of the reasons of the reviewing official for the referral of such allegations;

(B) a statement specifying the evidence which supports such allegations;

(C) a description of the claims or statements for which liability under section 3802 of this title is alleged;

(D) an estimate of the amount of money or the value of property or services requested or demanded in violation of section 3802 of this title; and

(E) a statement of any exculpatory or mitigating circumstances which may relate to such claims or statements.

(b)(1) Within 90 days after receipt of a notice from a reviewing official under paragraph (2) of subsection (a), the Attorney General or an Assistant Attorney General designated by the Attorney General shall transmit a written statement to the reviewing official which specifies—

(A) that the Attorney General or such Assistant Attorney General approves or disapproves the referral to a presiding officer of the allegations of liability stated in such notice;

(B) in any case in which the referral of allegations is approved, that the initiation of a proceeding under this section with respect to such allegations is appropriate; and

(C) in any case in which the referral of allegations is disapproved, the reasons for such disapproval.

(2) A reviewing official may refer allegations of liability to a presiding officer only if the Attorney General or an Assistant Attorney General designated by the Attorney General approves the referral of such allegations in a written statement described in paragraph (1) of this subsection.

(3) If the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to an authority head a written finding that the continuation of any hearing under this section with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, such hearing shall be immediately stayed and may be resumed only upon written authorization of the Attorney General.

(c)(1) No allegations of liability under section 3802 of this title with respect to any claim made, presented, or submitted by any person shall be referred to a presiding officer under paragraph (2) of subsection (b) if the reviewing official determines that—

(A) an amount of money in excess of $150,000; or

(B) property or services with a value in excess of $150,000,

is requested or demanded in violation of section 3802 of this title in such claim or in a group of related claims which are submitted at the time such claim is submitted.

(2)(A) Except as provided in subparagraph (B) of this paragraph, no allegations of liability against an individual under section 3802 of this title with respect to any claim or statement made, presented, or submitted, or caused to be made, presented, or submitted, by such individual relating to any benefits received by such individual shall be referred to a presiding officer under paragraph (2) of subsection (b).

(B) Allegations of liability against an individual under section 3802 of this title with respect to any claim or statement made, presented, or submitted, or caused to be made, presented, or submitted, by such individual relating to any benefits received by such individual may be referred to a presiding officer under paragraph (2) of subsection (b) if—

(i) such claim or statement is made by such individual in making application for such benefits;

(ii) such allegations relate to the eligibility of such individual to receive such benefits; and

(iii) with respect to such claim or statement, the individual—

(I) has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(II) acts in deliberate ignorance of the truth or falsity of the claim or

statement; or

(III) acts in reckless disregard of the truth or falsity of the claim or statement.

(C) For purposes of this subsection, the term “benefits” means—

(i) benefits under the supplemental security income program under title XVI of the Social Security Act;

(ii) old age, survivors, and disability insurance benefits under title II of the Social Security Act;

(iii) benefits under title XVIII of the Social Security Act;

(iv) assistance under a State program funded under part A of title IV of the Social Security Act;

(v) medical assistance under a State plan approved under section 1902(a) of the Social Security Act;

(vi) benefits under title XX of the Social Security Act;

(vii) benefits under the supplemental nutrition assistance program (as defined in section 3 of the Food and Nutrition Act of 2008);

(viii) benefits under chapters 11, 13, 15, 17, and 21 of title 38;

(ix) benefits under the Black Lung Benefits Act;

(x) benefits under the special supplemental nutrition program for women, infants, and children established under section 17 of the Child Nutrition Act of 1966;

(xi) benefits under section 336 of the Older Americans Act;

(xii) any annuity or other benefit under the Railroad Retirement Act of 1974;

(xiii) benefits under the Richard B. Russell National School Lunch Act;

(xiv) benefits under any housing assistance program for lower income families or elderly or handicapped persons which is administered by the Secretary of Housing and Urban Development or the Secretary of Agriculture;

(xv) benefits under the Low-Income Home Energy Assistance Act of 1981; and

(xvi) benefits under part A of the Energy Conservation in Existing Buildings Act of 1976,

which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

(d)(1) On or after the date on which a reviewing official is permitted to refer allegations of liability to a presiding officer under subsection (b) of this section, the reviewing official shall mail, by registered or certified mail, or shall deliver, a notice to the person alleged to be liable under section 3802 of this title. Such notice shall specify the allegations of liability against such person and shall state the right of such person to request a hearing with respect to such allegations.

(2) If, within 30 days after receiving a notice under paragraph (1) of this subsection, the person receiving such notice requests a hearing with respect to the allegations contained in such notice—

(A) the reviewing official shall refer such allegations to a presiding officer for the commencement of such hearing; and

(B) the presiding officer shall commence such hearing by mailing by registered or certified mail, or by delivery of, a notice which complies with paragraphs (2)(A) and

(3)(B)(i) of subsection (g) to such person.

(e)(1)(A) Except as provided in subparagraph (B) of this paragraph, at any time after receiving a notice under paragraph (2)(B) of subsection (d), the person receiving such notice shall be entitled to review, and upon payment of a reasonable fee for duplication, shall be entitled to obtain a copy of, all relevant and material documents, transcripts, records, and other materials, which relate to such allegations and upon which the findings and conclusions of the investigating official under paragraph (1) of subsection (a) are based.

(B) A person is not entitled under subparagraph (A) to review and obtain a copy of any document, transcript, record, or material which is privileged under Federal law.

(2) At any time after receiving a notice under paragraph (2)(B) of subsection (d), the person receiving such notice shall be entitled to obtain all exculpatory information in the possession of the investigating official or the reviewing official relating to the allegations contained in such notice. The provisions of subparagraph (B) of paragraph (1) do not apply to any document, transcript, record, or other material, or any portion thereof, in which such exculpatory information is contained.

(f) Any hearing commenced under paragraph (2) of subsection (d) shall be conducted by the presiding officer on the record in order to determine—

(1) the liability of a person under section 3802 of this title; and

(2) if a person is determined to be liable under such section, the amount of any civil penalty or assessment to be imposed on such person.

Any such determination shall be based on the preponderance of the evidence.

(g)(1) Each hearing under subsection (f) of this section shall be conducted—

(A) in the case of an authority to which the provisions of subchapter II of chapter 5 of title 5 apply, in accordance with—

(i) the provisions of such subchapter to the extent that such provisions are not inconsistent with the provisions of this chapter; and

(ii) procedures promulgated by the authority head under paragraph (3) of this subsection; or

(B) in the case of an authority to which the provisions of such subchapter do not apply, in accordance with procedures promulgated by the authority head under paragraphs (2) and (3) of this subsection.

(2) An authority head of an authority described in subparagraph (B) of paragraph (1) shall by regulation promulgate procedures for the conduct of hearings under this chapter. Such procedures shall include:

(A) The provision of written notice of the hearing to any person alleged to be liable under section 3802 of this title, including written notice of—

(i) the time, place, and nature of the hearing;

(ii) the legal authority and jurisdiction under which the hearing is to be held; and

(iii) the matters of facts and law to be asserted.

(B) The provision to any person alleged to be liable under section 3802 of this title of opportunities for the submission of facts, arguments, offers of settlement, or proposals of adjustment.

(C) Procedures to ensure that the presiding officer shall not, except to the extent required for the disposition of ex parte matters as authorized by law—

(i) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to the hearing to participate; or

(ii) be responsible to or subject to the supervision or direction of the investigating official or the reviewing official.

(D) Procedures to ensure that the investigating official and the reviewing official do not participate or advise in the decision required under subsection (h) of this section or the review of the decision by the authority head under subsection (i) of this section, except as provided in subsection (j) of this section.

(E) The provision to any person alleged to be liable under section 3802 of this title of opportunities to present such person's case through oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(F) Procedures to permit any person alleged to be liable under section 3802 of this title to be accompanied, represented, and advised by counsel or such other qualified representative as the authority head may specify in such regulations.

(G) Procedures to ensure that the hearing is conducted in an impartial manner, including procedures to—

(i) permit the presiding officer to at any time disqualify himself; and

(ii) permit the filing, in good faith, of a timely and sufficient affidavit alleging personal bias or another reason for disqualification of a presiding officer or a reviewing official.

(3)(A) Each authority head shall promulgate by regulation procedures described in subparagraph (B) of this paragraph for the conduct of hearings under this chapter. Such procedures shall be in addition to the procedures described in paragraph (1) or paragraph (2) of this subsection, as the case may be.

(B) The procedures referred to in subparagraph (A) of this paragraph are:

(i) Procedures for the inclusion, in any written notice of a hearing under this section to any person alleged to be liable under section 3802 of this title, of a description of the procedures for the conduct of the hearing.

(ii) Procedures to permit discovery by any person alleged to be liable under section 3802 of this title only to the extent that the presiding officer determines that such discovery is necessary for the expeditious, fair, and reasonable consideration of the issues, except that such procedures shall not apply to documents, transcripts, records, or other material which a person is entitled to review under paragraph (1) of subsection (e) or to information to which a person is entitled under paragraph (2) of such subsection. Procedures promulgated under this clause shall prohibit the discovery of the notice required under subsection (a)(2) of this section.

(4) Each hearing under subsection (f) of this section shall be held—

(A) in the judicial district of the United States in which the person alleged to be liable under section 3802 of this title resides or transacts business;

(B) in the judicial district of the United States in which the claim or statement upon which the allegation of liability under such section was made, presented, or submitted; or

(C) in such other place as may be agreed upon by such person and the presiding

officer who will conduct such hearing.

(h) The presiding officer shall issue a written decision, including findings and determinations, after the conclusion of the hearing. Such decision shall include the findings of fact and conclusions of law which the presiding officer relied upon in determining whether a person is liable under this chapter. The presiding officer shall promptly send to each party to the hearing a copy of such decision and a statement describing the right of any person determined to be liable under section 3802 of this title to appeal the decision of the presiding officer to the authority head under paragraph (2) of subsection (i).

(i)(1) Except as provided in paragraph (2) of this subsection and section 3805 of this title, the decision, including the findings and determinations, of the presiding officer issued under subsection (h) of this section are final.

(2)(A)(i) Except as provided in clause (ii) of this subparagraph, within 30 days after the presiding officer issues a decision under subsection (h) of this section, any person determined in such decision to be liable under section 3802 of this title may appeal such decision to the authority head.

(ii) If, within the 30-day period described in clause (i) of this subparagraph, a person determined to be liable under this chapter requests the authority head for an extension of such 30-day period to file an appeal of a decision issued by the presiding officer under subsection (h) of this section, the authority head may extend such period if such person demonstrates good cause for such extension.

(B) Any authority head reviewing under this section the decision, findings, and determinations of a presiding officer shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (f) of this section unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the presiding officer for consideration of such additional evidence.

(C) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the presiding officer pursuant to this section. The authority head shall promptly send to each party to the appeal a copy of the decision of the authority head and a statement describing the right of any person determined to be liable under section 3802 of this title to judicial review under section 3805 of this title.

(j) The reviewing official has the exclusive authority to compromise or settle any allegations of liability under section 3802 of this title against a person without the consent of the presiding officer at any time after the date on which the reviewing official is permitted to refer allegations of liability to a presiding officer under subsection (b) of this section and prior to the date on which the presiding officer issues a decision under subsection (h) of this section. Any such compromise or settlement shall be in writing.

§ 3804. Subpoena authority

(a) For the purposes of an investigation under section 3803(a)(1) of this title, an

investigating official is authorized to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and data not otherwise reasonably available to the authority.

(b) For the purposes of conducting a hearing under section 3803(f) of this title, a presiding officer is authorized—

(1) to administer oaths or affirmations; and

(2) to require by subpoena the attendance and testimony of witnesses and the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the presiding officer considers relevant and material to the hearing.

(c) In the case of contumacy or refusal to obey a subpoena issued pursuant to subsection (a) or (b) of this section, the district courts of the United States shall have jurisdiction to issue an appropriate order for the enforcement of any such subpoena. Any failure to obey such order of the court is punishable by such court as contempt. In any case in which an authority seeks the enforcement of a subpoena issued pursuant to subsection (a) or (b) of this section, the authority shall request the Attorney General to petition any district court in which a hearing under this chapter is being conducted, or in which the person receiving the subpoena resides or conducts business, to issue such an order.

§ 3805. Judicial review

(a)(1) A determination by a reviewing official under section 3803 of this title shall be final and shall not be subject to judicial review.

(2) Unless a petition is filed under this section, a determination under section 3803 of this title that a person is liable under section 3802 of this title shall be final and shall not be subject to judicial review.

(b)(1)(A) Any person who has been determined to be liable under section 3802 of this title pursuant to section 3803 of this title may obtain review of such determination in—

(i) the United States district court for the district in which such person resides or transacts business;

(ii) the United States district court for the district in which the claim or statement upon which the determination of liability is based was made, presented, or submitted; or

(iii) the United States District Court for the District of Columbia.

(B) Such review may be obtained by filing in any such court a written petition that such determination be modified or set aside. Such petition shall be filed—

(i) only after such person has exhausted all administrative remedies under this chapter; and

(ii) within 60 days after the date on which the authority head sends such person a copy of the decision of such authority head under section 3803(i)(2) of this title.

(2) The clerk of the court shall transmit a copy of a petition filed under paragraph (1) of this subsection to the authority and to the Attorney General. Upon receipt of the copy of such petition, the authority shall transmit to the Attorney General the record in the proceeding resulting in the determination of liability under section 3802 of this title. Except as otherwise

provided in this section, the district courts of the United States shall have jurisdiction to review the decision, findings, and determinations in issue and to affirm, modify, remand for further consideration, or set aside, in whole or in part, the decision, findings, and determinations of the authority, and to enforce such decision, findings, and determinations to the extent that such decision, findings, and determinations are affirmed or modified.

(c) The decisions, findings, and determinations of the authority with respect to questions of fact shall be final and conclusive, and shall not be set aside unless such decisions, findings, and determinations are found by the court to be unsupported by substantial evidence. In concluding whether the decisions, findings, and determinations of an authority are unsupported by substantial evidence, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(d) Any district court reviewing under this section the decision, findings, and determinations of an authority shall not consider any objection that was not raised in the hearing conducted pursuant to section 3803(f) of this title unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the court shall remand the matter to the authority for consideration of such additional evidence.

(e) Upon a final determination by the district court that a person is liable under section 3802 of this title, the court shall enter a final judgment for the appropriate amount in favor of the United States.

§ 3806. Collection of civil penalties and assessments

(a) The Attorney General shall be responsible for judicial enforcement of any civil penalty or assessment imposed pursuant to the provisions of this chapter.

(b) Any penalty or assessment imposed in a determination which has become final pursuant to this chapter may be recovered in a civil action brought by the Attorney General. In any such action, no matter that was raised or that could have been raised in a hearing conducted under section 3803(f) of this title or pursuant to judicial review under section 3805 of this title may be raised as a defense, and the determination of liability and the determination of amounts of penalties and assessments shall not be subject to review.

(c) The district courts of the United States shall have jurisdiction of any action commenced by the United States under subsection (b) of this section.

(d) Any action under subsection (b) of this section may, without regard to venue requirements, be joined and consolidated with or asserted as a counterclaim, cross-claim, or setoff by the United States in any other civil action which includes as parties the United States and the person against whom such action may be brought.

(e) The United States Court of Federal Claims shall have jurisdiction of any action under

subsection (b) of this section to recover any penalty or assessment if the cause of action is asserted by the United States as a counterclaim in a matter pending in such court.

(f) The Attorney General shall have exclusive authority to compromise or settle any penalty or assessment the determination of which is the subject of a pending petition pursuant to section 3805 of this title or a pending action to recover such penalty or assessment pursuant to this section.

(g)(1) Except as provided in paragraph (2) of this subsection, any amount of penalty or assessment collected under this chapter shall be deposited as miscellaneous receipts in the Treasury of the United States.

(2)(A) Any amount of a penalty or assessment imposed by the United States Postal Service under this chapter shall be deposited in the Postal Service Fund established by section 2003 of title 39.

(B) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with old age and survivors benefits under title II of the Social Security Act shall be deposited in the Federal Old-Age and Survivors Insurance Trust Fund.

(C) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with disability benefits under title II of the Social Security Act shall be deposited in the Federal Disability Insurance Trust Fund.

(D) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with benefits under part A of title XVIII of the Social Security Act shall be deposited in the Federal Hospital Insurance Trust Fund.

(E) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with benefits under part B of title XVIII of the Social Security Act shall be deposited in the Federal Supplementary Medical Insurance Trust Fund.

§ 3807. Right to administrative offset

(a) The amount of any penalty or assessment which has become final under section 3803 of this title, or for which a judgment has been entered under section 3805(e) or 3806 of this title, or any amount agreed upon in a settlement or compromise under section 3803(j) or 3806(f) of this title, may be collected by administrative offset under section 3716 of this title, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the person liable for such penalty or assessment.

(b) All amounts collected pursuant to this section shall be remitted to the Secretary of the Treasury for deposit in accordance with section 3806(g) of this title.

§ 3808. Limitations

(a) A hearing under section 3803(d)(2) of this title with respect to a claim or statement shall be commenced within 6 years after the date on which such claim or statement is made, presented, or submitted.

(b) A civil action to recover a penalty or assessment under section 3806 of this title shall be commenced within 3 years after the date on which the determination of liability for such penalty or assessment becomes final.

(c) If at any time during the course of proceedings brought pursuant to this chapter the authority head receives or discovers any specific information regarding bribery, gratuities, conflict of interest, or other corruption or similar activity in relation to a false claim or statement, the authority head shall immediately report such information to the Attorney General, and in the case of an authority in which an Office of Inspector General is established by the Inspector General Act of 1978 or by any other Federal law, to the Inspector General of that authority.

§ 3809. Regulations

Within 180 days after the date of enactment of this chapter [Oct. 21, 1986], each authority head shall promulgate rules and regulations necessary to implement the provisions of this chapter. Such rules and regulations shall—

(1) ensure that investigating officials and reviewing officials are not responsible for conducting the hearing required in section 3803(f) of this title, making the determinations required by subsections (f) and (h) of section 3803 of this title, or making collections under section 3806 of this title; and

(2) require a reviewing official to include in any notice required by section 3803(a)(2) of this title a statement which specifies that the reviewing official has determined that there is a reasonable prospect of collecting, from a person with respect to whom the reviewing official is referring allegations of liability in such notice, the amount for which such person may be liable.

[§ 3810. Repealed. Pub.L. 104-66, Title III, § 3001(c)(1), Dec. 21, 1995, 109 Stat. 734]

§ 3811. Effect on other law

(a) This chapter does not diminish the responsibility of any agency to comply with the provisions of chapter 35 of title 44.

(b) This chapter does not supersede the provisions of section 3512 of title 44.

(c) For purposes of this section, the term “agency” has the same meaning as in section 3502(1) of title 44.

§ 3812. Prohibition against delegation

Any function, duty, or responsibility which this chapter specifies be carried out by the Attorney General or an Assistant Attorney General designated by the Attorney General, shall not be delegated to, or carried out by, any other officer or employee of the Department of Justice.

Section 806 would establish policy to allowing weapon system support contractors to integrate DLA storage and distribution capability into their supply chain in support of the weapon system. Service components should consider utilization of existing DoD storage, distribution, and transportation when developing requirements for Performance Based Logistics programs. This proposal is needed because the Defense Logistics Agency, which primarily operates under the authority of title 10, United States Code, section 2208, cannot provide services to entities such as government contractors without a separate statutory authorization. This proposal provides that authorization.

Performance Based Logistics contracts are established to improve performance of Department of Defense weapons systems, but the contracts often use commercial sources for the storage and distribution of materiel supporting the contract. In many cases an existing Defense Logistics Agency Storage and Distribution Center is available to support the contractor's supply chain, so that Performance Based Logistics contractor use of commercial supply and distribution sources potentially increases Department of Defense logistics costs by creating redundant storage and distribution capabilities and incorporating the costs associated with these in their contract prices to the government.

This proposal addresses the problems of redundant storage and distribution capabilities and increased logistics costs by allowing the integration of material used to support weapon systems into existing government facilities.

This proposal would allow the Department and the Military Services to address the described problem. As an example, Lockheed Martin and Pratt and Whitney recently approached DLA to partner on sustainment support for the Joint Strike Fighter. Both Product Support Integrators seek to leverage existing DLA capability to reduce Joint Strike Fighter program cost. This proposal would allow implementation of such advantageous partnerships.

Budget Implications: The resources reflected in the table below are funded within the FY 2017 President's Budget. NOTE: Dollars cited are for a proposed partnership between DLA Distribution and Pratt & Whitney in support of Joint Strike Fighter engine program. The expense is 100 percent reimbursable to DLA and the Defense-wide Working Capital Fund. Additional commercial partnerships under this proposal would utilize a similar business plan. A 1 percent increase was projected for each out-year of performance.

RESOURCE REQUIREMENTS ($ THOUSANDS)								
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Appropriation From	Budget Activity	Dash-1 Line Item

Defense Logistics Agency (DLA)	3,661	3,698	3,735	3,772	3,810	Defense-Wide Working Capital Fund 493005D	20	ES08

Changes to Existing Law: This section would not edit the text of any existing law.

Section 807 would amend section 1491 of title 28, United States Code, to impose timeliness rules at the U.S. Court of Federal Claims (COFC) that will mirror those for bid protests filed with the Government Accountability Office (GAO), thereby reducing the time to decide bid protests by avoiding unnecessarily repetitive protests.

Section 3552 of title 31, United States Code, provides statutory authority for bid protests to be decided by the Government Accountability Office (GAO). P. L. 98–369, div. B, title VII, §2741(a), July 18, 1984, 98 Stat. 1199. Section 1491(b)(1) of title 28, United States Code, provided temporary concurrent federal jurisdiction between the COFC and the United States District Courts to hear pre-award or post-award bid protest matters. Section 12(d) of the Administrative Disputes Resolution Act of 1996 (P. L. 104-320; 110 Stat. 3870; 5 U.S.C. 571 note) (ADRA), contained a sunset provision that terminated District Court jurisdiction to hear such bid protests under section 1491 as of January 1, 2001, leaving all ADRA bid protest cases under the jurisdiction of the COFC. The jurisdiction of the COFC and the GAO are concurrent. As a result, a protestor may file a protest with the GAO and, if the protest is denied, file suit at the COFC.

The Federal bid protest system is fashioned around the two goals of ensuring accountability through visibility in the procurement process while expeditiously resolving bid protests. Expeditious resolution of protests is an express requirement of COFC and GAO jurisdiction. Section 3554(a)(1) of title 31, United States Code, states, "the Comptroller General shall provide for the inexpensive and expeditious resolution of protests" and section 1491(b)(3) of title 28, United States Code, states that "[i]n exercising jurisdiction . . . [the COFC] shall give due regard to the interests of national defense and national security and the need for expeditious resolution of the action."

The expeditious resolution of protests is greatly hindered by the ability of a protestor to seek redress at GAO and, faced with a negative outcome, then seek another review of the agency's actions by filing a protest with the COFC. In Axiom Resource Management, Inc. v. United States, 80 Fed. Cl. 530, 539 (2008), rev 564 F.3d 1374 (Fed. Cir. 2009), Axiom challenged an award to Lockheed Martin Federal Healthcare, Inc. ("Lockheed") to perform program management services for the Tricare Management Agency. Axiom alleged the award to Lockheed was improper because Lockheed suffered from a variety of organizational conflicts of interest ("OCIs").

These same allegations had previously been challenged at the GAO. Id. at 1377. In response to two GAO protests, the agency took corrective action to analyze the OCI allegations

raised by Axiom. After performing a detailed analysis, the Contracting Officer concluded the alleged OCIs could be avoided or mitigated. The award to Lockheed stood, and Axiom filed a third GAO protest which was denied. Axiom subsequently filed suit at the COFC where, ultimately, the award to Lockheed was set aside. Axiom Res. Mgmt., Inc. v. United States, 80 Fed. Cl. 530, 539 (2008). The COFC decision was ultimately reversed by the Federal Circuit. Axiom Resource Management, Inc v. United States, 564 F.3d 1374 (Fed. Cir. 2009). This protest litigation took nearly two years. A similar procedural history occurred in MASAI Technologies Corp. v. United States, 79 Fed. Cl. 433 (2007). In MASAI, the allegations considered by the COFC had been raised previously at the GAO resulting in corrective action by the agency two times. Id. at 436-40. Ultimately, the Contracting Officer determined the initial award was correct and GAO denied MASAI's protest. In MASAI, however, the COFC agreed with GAO's denial. The MASAI litigation took approximately fourteen months. See also Labatt Food Serv., Inc. v. United States, 577 F.3d 1375 (Fed. Cir. 2009) (one year to resolve) and Ala. Aircraft Indus., Inc.--Birmingham v. United States, 586 F.3d 1372 (Fed. Cir. 2009) (over one year to resolve). At the conclusion of the litigation, the parties in each of these cases found themselves in the same position they held when the GAO issued its decision on the merits of the protests; the agency's actions were ultimately upheld.

By establishment of parallel timelines at GAO and COFC, the statutory requirement for expeditious resolution of protests is maintained, without sacrificing accountability. Regarding pre-award protests, GAO has clearly established timeliness rules.

> Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing time for receipt of proposals following the incorporation.
>
> 4 C.F.R. § 21.2(a)(1).

Neither the Tucker Act nor the ADRA established a unique statute of limitations for COFC bid protests. The COFC can entertain protests "without regard to whether suit is instituted before or after the contract is awarded." 28 U.S.C. 1491(b)(1) (2006). Under section 2501 of title 28, United States Code, the statute of limitations at the COFC is six years. Several COFC decisions have considered whether or not protests based upon alleged improprieties in a solicitation are barred when filed after the solicitation closing date, with varying outcomes. See TransAtlantic Lines LLC v. United States, 68 Fed. Cl. 48, 52-53 (2005) (GAO rule that limits its advisory role cannot limit the exercise of jurisdiction of the COFC); Software Testing Solutions, Inc. v. United States, 58 Fed. Cl. 533, 535 (2003) (delay in bringing a protest may be considered in the analysis of whether injunctive relief is warranted but not basis for rejecting request); ABF Freight Sys., Inc. v. United States, 55 Fed. Cl. 392, 399-400 (2003) (quoting N.C. Div. of Servs. for the Blind v. United States, 53 Fed. Cl. 147, 165 (2002)) (GAO timeliness rule applied); Aerolease Long Beach v. United States, 31 Fed. Cl. 342, 358 (1994) (citing Logicon, Inc. v. United States, 22 Cl. Ct. 776, 789 (1991) (declining to accept the GAO bid protest timeliness regulations as always controlling).

In 2007, however, the Court of Appeals for the Federal Circuit resolved this issue when it issued its decision in Blue & Gold Fleet, L.P. v. United States, 492 F.3d 1308 (Fed. Cir. 2007). In that decision the Federal Circuit held that ". . . a party who has the opportunity to object to the terms of a government solicitation containing a patent error and fails to do so prior to the close of the bidding process waives its ability to raise the same objection subsequently in a bid protest action in the Court of Federal Claims." Id. at 1313. Accordingly, with respect to protests based upon solicitation improprieties, the Federal Circuit has, in essence, adopted the GAO bid protest timeliness regulation.

The same cannot be said for post-award bid protests. As discussed, the COFC will consider protests filed after consideration by GAO and months after contract award. In PlanetSpace Inc. v. United States, 92 Fed. Cl. 520 (2010), the United States sought to bar the protestor's claim under the doctrine of laches since the protestor filed at the COFC three months after losing its GAO protest and seven months after contract award. The COFC held,

Even if the court . . . were to conclude that there was no reason for the delay in filing, defendant's laches argument would still fail. "When a limitation on the period for bringing suit has been set by statute, laches will generally not be invoked to shorten the statutory period." Adv. Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc., 988 F.2d 1157, 1161 (Fed. Cir. 1993) (citing Cornetta v. United States, 851 F.2d 1372, 1377-78 (Fed. Cir. 1988) (en banc)). This bid protest is properly before the court pursuant to 28 U.S.C. § 1491(b) and thus is governed by the Tucker Act's six-year statute of limitations set forth at 28 U.S.C. § 2501. Absent "extraordinary circumstances," this court will not invoke laches to bar an otherwise timely protest. CW Gov't Travel, Inc., 61 Fed. Cl. 559, 569 (2004) ("Had Congress wanted to set a statute of limitations on bid protest actions, it would have done so. Because Congress did not so limit the jurisdiction of this court to hear such actions, we would be reluctant to invoke laches except under extraordinary circumstances that are not present in this case."). To be sure, defendant has not cited, and the court is not aware of, a single instance in which the court invoked laches to bar a bid protest that was filed a mere three months after a failed GAO protest or a mere seven months after contract award. Id. at 531. The Court noted that should the protestor succeed on the merits of the case, the requested injunctive relief is not automatic. Thus, similar to the pre-award decision in Software Testing Solutions, supra, the delay in filing is properly considered in determining whether injunctive relief is appropriate, but does not preclude review of the underlying protest.

Despite the COFC's willingness to consider a delay in filing in fashioning its remedy, the disruption to the procurement process and associated costs and uncertainties stemming with serial protests and the lack of a reasonable statute of limitations for COFC protests outweigh any perceived benefit. For these reasons, 28 U.S.C. 1491 should be amended to impose jurisdictional limitations that parallel those imposed at GAO.

Specifically, subsection (a) of the proposal strikes any reference to the United States district courts and makes clear that only the COFC has jurisdiction to provide judicial review of bid protests. By eliminating references to the district courts, section 1491(b) is reconciled with the sunset provisions of the ADRA that ended district court bid protest jurisdiction in 2001, and

with section 861 of the FY 2012 National Defense Authorization Act (P. L. 112-81) that ended district court jurisdiction over bid protests pertaining to the award of maritime contracts.

Subparagraph (a)(2)(B) of the proposal lays out the timeliness rules for bid protests by adding four new subparagraphs to section 1491(b)(1):

It would add a new subparagraph (A) which will impose time limits for bringing a pre-award bid protest before the COFC. A pre-award protest is a challenge to a solicitation before award is made. This provision requires that such protests be brought before the receipt of proposals. If an objectionable provision is introduced by an amendment to the original solicitation, any protest must be brought before the revised date for submittal of proposals as forth set in the amendment to the solicitation. This provision makes these time limits jurisdictional. The Federal Circuit's decision in Blue & Gold Fleet, L.P. v. United States, 492 F.3d 1308 (Fed. Cir. 2007) began the process of aligning COFC practice with that of the GAO in the area of pre-award timeliness. There, the Federal Circuit effectively applied the pre-award timeliness rules of the GAO to bid protests filed at the COFC by ruling that a party that failed to challenge the terms of a solicitation prior to the close of the bidding process waived its ability to do so after award. Subsequent COFC decisions emphasized that this time bar is based upon the doctrine of waiver, and is not jurisdictional. In at least one decision the COFC therefore considered untimely pre-award protest allegations in determining whether a protester possessed sufficient standing to bring a COFC protest. The above language fully aligns GAO practice with COFC practice by mirroring precisely the GAO timeliness rules at 4 C.F.R. § 21.2(a)(2), and making the bar to untimely COFC pre-award protests jurisdictional.

It would add a new subparagraph (B) to impose a time limit for bringing a post-award protest before the COFC, which is almost invariably a challenge to a contract award decision. This language is closely modeled on the GAO timeliness rules at 4 C.F.R. § 21.2(a)(2). This section imposes a 10-day time limit on bringing bid protests from when the basis of the protest was known or should have been known. It tolls that 10-day period for required debriefings in order to encourage debriefings, which are designed to avoid protests by providing information to disappointed offerors.

It would add a new subparagraph (C) to section 1491(b)(1) to ensure COFC bid protests in much the same manner as GAO. Specifically, the Federal Acquisition Regulations encourage the resolution of protests at the agency level, if possible. The GAO rules further this policy because the GAO will consider a bid protest that is filed outside the 10-day period if the protester first brings a timely protest to the agency (referred to as an "agency-level protest"). See 4 C.F.R. § 21.2(a)(3). The new subparagraph (C) will apply the same concept to COFC bid protests. Also, COFC case law has held that an offeror that fails to submit a proposal before the date set for receipt of proposals is not an interested party to protest. This provision allows a protester to pursue a pre-award, agency-level protest and still bring its protest to the COFC even if it does not submit a proposal and even if the date set for receipt of proposals elapses.

Finally it would add a new subparagraph (D) to section 1491(b)(1) that would align COFC practice with the GAO requirement that protests be timely on their face, and if not, they are dismissed. It also reconciles COFC practice with the GAO requirement at 4 C.F.R. § 21.1(c)(4)

that a protester set forth a detailed legal and factual basis of protest. This prevents protesters from presenting a protest in piecemeal fashion and unduly delaying an agency procurement based upon mere speculation about agency misconduct or error. Finally it makes clear that the COFC shall not consider a protest that is untimely because it was first filed at the GAO, thus underlining the choice of forum requirement which is the object of the proposal.

Subsection (b) of the proposal ensures that a protestor may not receive both injunctive relief and monetary relief as they can under the current section 1491(b). As the Department of Justice has noted, a protester that receives injunctive relief is made whole relative to its competitors. If it receives monetary relief in addition, it receives a windfall. Therefore, a protester should be entitled to injunctive relief or monetary relief, but not both.

Subsection (c) of the proposal clarifies that none of the proposed changes to 1491(b) are intended to infringe on the COFC's jurisdiction to review agency overrides of CICA stays, and to enjoin such overrides when appropriate.

Subsection (d) provides a delayed effective date for this provision. A 180-day effective date is appropriate due to the impact on the existing rights of interested parties resulting from shortening the statute of limitations from six years to ten days. It could be prejudicial to interested parties seeking to take full advantage of their current statutory rights by providing for an effective date which cuts off those rights with a shorter notice period. Currently, interested parties have the ability to file a protest with GAO with the expectation that they can also file a protest with the COFC if unsuccessful at GAO. If a protester files its protest at the ten day limit, and GAO uses the entire 100-day statutory period to issue its protest decision, the GAO process will have taken nearly four months. An effective date of 180 days provides interested parties with a reasonable time to file with the COFC prior to the statutory change taking effect.

Additionally, this proposal amends section 3556 of title 31, United States Code, to conform with the proposed change.

By harmonizing the timeliness rules between the COFC and the GAO, a protester would be forced to make a choice of forum in deciding where to bring its protest. The improvements to the protest system would be as follows: (1) the amount of time that could be consumed by protests would be reduced, (2) scarce agency procurement resources would be conserved by ensuring that two separate trial-level forums do not adjudicate the same bid protest, and (3) protesters would be assured of accountability and transparency no matter which forum they elected. This reform would largely eliminate an unintended "forum shopping" practice that has arisen under the existing bid protest system, and would materially contribute to the expeditious yet fair resolution of bid protests.

Budget Implications: The proposal has no budgetary impact. Modifying the filing deadlines of the Court of Federal Claims to parallel those of the Government Accountability Office does not change costs. Regardless of where or when a bid protest is filed, it must be defended.

Changes to Existing Law: This proposal would amend section 1491(b) of title 28, United States Code, and section 3556 of title 31, United States Code, as follows:

TITLE 28, UNITED STATES CODE

* * * * * * *

§ 1491. Claims against United States generally; actions involving Tennessee Valley Authority

(a)(1) The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(2) To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Court of Federal Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under section 7104(b)(1) of title 41, including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Act.

(b)(1) ~~Both the Unites States Court of Federal Claims and the district courts of the United States~~ The United States Court of Federal Claims shall have jurisdiction to render judgment on an action by an interested party objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement. ~~Both the United States Court of Federal Claims and the district courts of the United States~~ The United States Court of Federal Claims shall have jurisdiction to entertain such an action without regard to whether suit is instituted before or after the contract is awarded, but such jurisdiction is subject to the time limits as follows.

(A) A protest based upon alleged improprieties in a solicitation that are apparent before bid opening or the time set for receipt of initial proposals shall be filed before bid opening or the time set for receipt of initial proposals. In the case of a procurement where proposals are requested, alleged improprieties that do not exist in the initial solicitation but that are subsequently incorporated into the solicitation shall be protested not later than the next closing time for receipt of proposals following the incorporation. A protest that meets these time limitations that was previously filed with the Comptroller General may not be reviewed.

(B) A protest other than one covered by subparagraph (A) shall be filed not later than 10 days after the basis of the protest is known or should have been known (whichever is earlier), with the exception of a protest challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required. In such a case, with respect to any protest the basis of which is known or should have been known either before or as a result of the debriefing, the initial protest shall not be filed before the debriefing date offered to the protester, but shall be filed not later than 10 days after the date on which the debriefing is held.

(C) If a timely agency-level protest was previously filed, any subsequent protest to the United States Court of Federal Claims that is filed within 10 days of actual or constructive knowledge of initial adverse agency action shall be considered, if the agency-level protest was filed in accordance with subparagraphs (A) and (B), unless the contracting agency imposes a more stringent time for filing the protest, in which case the agency's time for filing shall control. In a case where an alleged impropriety in a solicitation is timely protested to a contracting agency, any subsequent protest to the United States Court of Federal Claims shall be considered timely if filed within the 10-day period provided by this subparagraph, even if filed after bid opening or the closing time for receipt of proposals.

(D) A protest untimely on its face shall be dismissed. A protester shall include in its protest all information establishing the timeliness of the protest; a protester shall not be permitted to introduce for the first time in a motion for reconsideration information necessary to establish that the protest was timely. Under no circumstances may the United States Court of Federal Claims consider a protest that is untimely because it was first filed with the Government Accountability Office.

(2) To afford relief in such an action, the courts may award any relief that the court considers proper, including declaratory and injunctive relief, except that monetary relief shall not be available if injunctive relief is or has been granted, and any monetary relief shall be limited to bid preparation and proposal costs.

(3) In exercising jurisdiction under this subsection, the courts shall give due regard to the interests of national defense and national security and the need for expeditious resolution of the action.

(4) In any action under this subsection, the courts shall review the agency's decision pursuant to the standards set forth in section 706 of title 5.

(5) The United States Court of Federal Claims shall have jurisdiction to render judgment on an action by an interested party challenging an agency's decision to override a stay of contract award or contract performance that would otherwise be required by section 3553 of title 31.

~~(5)~~ (6) If an interested party who is a member of the private sector commences an action described in paragraph (1) with respect to a public-private competition conducted under Office of Management and Budget Circular A–76 regarding the performance of an activity or function of a Federal agency, or a decision to convert a function performed by Federal employees to private sector performance without a competition under Office of Management and Budget Circular A–76, then an interested party described in section 3551(2)(B) of title 31 shall be entitled to intervene in that action.

~~(6)~~ (7) Jurisdiction over any action described in paragraph (1) arising out of a maritime contract, or a solicitation for a proposed maritime contract, shall be governed by this section and

shall not be subject to the jurisdiction of the district courts of the United States under the Suits in Admiralty Act (chapter 309 of title 46) or the Public Vessels Act (chapter 311 of title 46).

(c) Nothing herein shall be construed to give the United States Court of Federal Claims jurisdiction of any civil action within the exclusive jurisdiction of the Court of International Trade, or of any action against, or founded on conduct of, the Tennessee Valley Authority, or to amend or modify the provisions of the Tennessee Valley Authority Act of 1933 with respect to actions by or against the Authority.

TITLE 31, UNITED STATES CODE

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§3556. Nonexclusivity of remedies~~; matters included in agency record~~

This subchapter does not give the Comptroller General exclusive jurisdiction over protests, and nothing contained in this subchapter shall affect the right of any interested party to file a protest with the contracting agency or to file an action in the United States Court of Federal Claims instead of with the Comptroller General. ~~In any such action based on a procurement or proposed procurement with respect to which a protest has been filed under this subchapter, the reports required by sections 3553(b)(2) and 3554(e)(1) of this title with respect to such procurement or proposed procurement and any decision or recommendation of the Comptroller General under this subchapter with respect to such procurement or proposed procurement shall be considered to be part of the agency record subject to review.~~

Section 808 would amend section 1903 of title 41, United States Code, by adding cyber attacks to the list of situations for which Special Emergency Procurement Authority (SEPA) is authorized. Currently, SEPA may only be used in support of a contingency operation or to facilitate the defense against or recovery from a nuclear, biological, chemical, or radiological attack against the United States.

This authority is needed to facilitate the defense against or recovery from a cyber attack because a cyber operation can achieve military objectives similar to the destruction caused by the dropping of a bomb, but may or may not always be visually apparent. As the Federal lead for cyber incident response and domestic cybersecurity, the Department of Homeland Security's ability to facilitate the defense against and recovery from a cyber attack would also be greatly enhanced by this authority. Although a cyber attack is carried out in cyberspace by a computer used to degrade, disrupt, or destroy information that resides in other computers and computer networks, or the computers and networks themselves, these actions can still create devastating results, especially when the damage inflicted appears in the physical domain.

The Department of Defense (DoD) has recently taken certain strategic measures to recognize this distinct domain of warfare. For example, *Joint Publication 3-12(R)* was issued in February 2013. This publication "provides joint doctrine for the planning, preparation,

execution, and assessment of joint cyberspace operations across the range of military operations" and defines key concepts of cyberspace and cyber attacks. In June 2015, DoD published the *Law of War Manual*. This manual deals with issues of fundamental importance to the armed forces, and includes a chapter that "addresses how law of war principles and rules apply to relatively novel cyber capabilities and the cyber domain." Such efforts to modernize military doctrine reflect growing concern for the need to facilitate the defense against or recovery from a cyber-attack against the United States.

Furthermore, this proposal is consistent with duties imposed by section 1642 "Authorization of Military Cyber Operations" of the National Defense Authorization Act for Fiscal Year 2016 (P.L. 114-92). Specifically, Congress directed the Secretary of Defense to "develop, prepare, and coordinate; make ready all armed forces for purposes of; and, when appropriately authorized to do so, conduct, a military cyber operation in response to malicious cyber activity carried out against the United States…" Adding cyber attacks to the list of situations for which SEPA is authorized would enable DoD to streamline solicitation, evaluation, and award procedures. This authority would be appropriate when the circumstances of a malicious attack from cyberspace do not fit other forms of attack from air, land, sea, or space domains.

Budget Implications: The proposal has no budgetary impact. This proposal to expand the existing authority to include cyber attacks would not increase costs to the Government because this proposal only addresses procurement processes.

Changes to Existing Law: This proposal would amend section 1903(a)(2) of title 41, United States Code, as follows:

§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 **cyber,** nuclear, biological, chemical, or radiological attack against the United States.

(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 809 would amend section 1762 of title 10, United States Code, to (1) increase the 120,000 ceiling limitation on the number of persons who may participate in the project to 150,000; and (2) extend the authority to conduct the AcqDemo until December 31, 2022. Since implementation, there have been four legislative issuances that prescribed various modifications to the original legislation involving participant eligibility criteria and approval processing. Section 872 of the Ike Skelton NDAA for FY 2011 (P.L. 111-383, 124 Stat. 4300, 4302) repealed section 4308 of the NDAA for FY 1996 (P.L. 104-106; 10 U.S.C. 1701 note) and amended Chapter 87 of title 10, United States Code, by inserting after section 1761, the new section: **"1762. Demonstration project relating to certain acquisition personnel management policies and procedures"**. This legislation compiles the various pieces of AcqDemo legislation; prescribes two assessments of AcqDemo; extends the authority expiration date to September 30, 2017; and prescribes that within 6 months of the authority's termination, project employees shall convert to the personnel system created pursuant to section 9902 of title 5.

In addition to the numerous legislative provisions affecting AcqDemo since its implementation in FY 1999, over 71 percent of the participants were converted into the National Security Personnel System (NSPS) in FY 2007. The residual 29 percent of participants were covered by bargaining units and were to remain in AcqDemo until it was appropriate for them to transition to NSPS. Four years later, in FY 2011, the former AcqDemo participants were converted back to AcqDemo following the repeal of NSPS. This hiatus from planned AcqDemo growth and maturity severely hampered the continued design, development, implementation, and refinement of the original and new AcqDemo interventions in support of the Department's acquisition mission and workforce.

The acquisition workforce supports a constantly changing acquisition resource management environment further complicated by Government sequestration actions required by

the Budget Control Act of 2011. It is impacted by a variable workload and mission changes that require streamlined, flexible, and effective personnel processes and procedures as well as a professionally skilled, knowledgeable, and adaptable workforce in which significant investment of Department resources has been made. These requirements are paramount in achieving excellent acquisition outcomes as evidenced by the enhanced goals of the Better Buying Power 3.0 Program designed and implemented by the Under Secretary of Defense (Acquisition, Technology, and Logistics). Through this program, the Under Secretary is seeking to obtain greater efficiency and productivity in defense spending by pursuing initiatives in the following seven focus areas: (l) Achieve Affordable Programs; (2) Control Costs Throughout the Product Lifecycle; (3) Incentivize Productivity and Innovation in Industry and Government; (4) Eliminate Unproductive Processes and Bureaucracy; (5) Promote Effective Competition; (6) Improve Tradecraft in Services Acquisition; and (7) Improve the Professionalism of the Total Acquisition Workforce.

The AcqDemo was and is designed to provide the necessary personnel flexibilities and tools that can function in a dynamic environment to improve Department managers' ability to manage the acquisition workforce and its productivity effectively. As such, it is an essential tool in the design, development, test, and evaluation of personnel interventions for their effectiveness in the vigorous acquisition environment. For the Secretary to have a streamlined process and the time necessary to test and evaluate modified or new flexibilities and for both short- and long-range planning of the design and development of new interventions, the proposal is to extend the Termination of Authority, subsection (g), to December 31, 2022.

The AcqDemo was designed to experiment with the necessary personnel flexibilities and tools that can function in a dynamic acquisition environment to improve Department managers' ability to manage the acquisition workforce and its productivity effectively. As such, through the design, development, test, and evaluation of its flexibilities for their effectiveness in the vigorous acquisition environment since the project implementation in FY 1999, the classification, contribution assessment, and compensation flexibilities have become essential within the acquisition cadre of workforce management tools. There is strong evidence that the initiatives implemented under the AcqDemo are successful. Component Service acquisition leaders' feedback on effectiveness of AcqDemo programs on recruitment and retention has been positive. Senior Leader interviews were positive on the outcomes of initiatives but suggested processes may need to be tweaked. Analysis in a 2014 Rand Corporation Report[3] provided evidence that people who entered the acquisition workforce and were covered by AcqDemo (or any demo pay plan) were retained longer than those in the GS pay plan. AcqDemo retention was 24 percent higher than for the GS pay plan. Results from the 2015 OPM Federal Employee Viewpoint Survey indicated that AcqDemo responses overall were 87 percent as good as or better than the 2014 responses from Federal employees.

As a result of the positive aspects of AcqDemo and the number of requests by organizations to participate, USD(AT&L) has approved an expansion of AcqDemo to requesting organizations to achieve a better balanced population between Components and 4th Estate Agencies for evaluation

[3] *Retention and Promotion of High-Quality Civil Service Workers in the Department of Defense Acquisition Workforce*, Christopher Guo, Philip Hall-Partyka, Susan M. Gates, Rand Corporation, Santa Monica, California, 2014.

purposes. The AcqDemo Program Office initially received interest queries from all Components/4th Estate Agencies totaling over 32,000 employees. It is expected that the number of interested organizations will continue to increase as well as the number of covered employees as additional flexibilities are included in AcqDemo for testing and evaluation and positive results are obtained. It is estimated that approximately 20,000 employees per year over the next five years could possibly be added to AcqDemo rolls requiring an increase in the legislatively imposed ceiling of 120,000 participants to 150,000.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	0.0	0.0	2.4	2.4	2.4	Operation and Maintenance, Defense-Wide	04	4GTN	0901388D8Z

Changes to Existing Law: This proposal would amend section 1762 of title 10, United States Code, as follows:

§ 1762. Demonstration project relating to certain acquisition personnel management policies and procedures

(a) COMMENCEMENT.—The Secretary **o**f Defense is authorized to carry out a demonstration project, the purpose of which is to determine the feasibility or desirability of one or more proposals for improving the personnel management policies or procedures that apply with respect to the acquisition workforce of the Department of Defense and supporting personnel assigned to work directly with the acquisition workforce.

(b) TERMS AND CONDITIONS.—(1) Except as otherwise provided in this subsection, any demonstration project described in subsection (a) shall be subject to section 4703 of title 5 and all other provisions of such title that apply with respect to any demonstration project under such section.

(2) Subject to paragraph (3), in applying section 4703 of title 5 with respect to a demonstration project described in subsection (a)—

(A) "180 days" in subsection (b)(4) of such section shall be deemed to read "120 days";

(B) "90 days" in subsection (b)(6) of such section shall be deemed to read "30 days"; and

(C) subsection (d)(1) of such section shall be disregarded.;

(3) Paragraph (2) shall not apply with respect to a demonstration project unless—

(A) for each organization or team participating in the demonstration project—

(i) at least one-third of the workforce participating in the demonstration project consists of members of the acquisition workforce; and

(ii) at least two-thirds of the workforce participating in the demonstration project consists of members of the acquisition workforce and supporting personnel assigned to work directly with the acquisition workforce; and

(B) the demonstration project commences before October 1, 2007.

(c) LIMITATION ON NUMBER OF PARTICIPANTS.—The total number of persons who may participate in the demonstration project under this section may not exceed ~~120,000~~ 150,000.

(d) EFFECT OF REORGANIZATIONS.—The applicability of paragraph (2) of subsection (b) to an organization or team shall not terminate by reason that the organization or team, after having satisfied the conditions in paragraph (3) of such subsection when it began to participate in a demonstration project under this section, ceases to meet one or both of the conditions set forth in subparagraph (A) of such paragraph (3) as a result of a reorganization, restructuring, realignment, consolidation, or other organizational change.

(e) ASSESSMENTS.—(1) The Secretary of Defense shall designate an independent organization to conduct two assessments of the acquisition workforce demonstration project described in subsection (a).

(2) Each such assessment shall include the following:

(A) A description of the workforce included in the project.

(B) An explanation of the flexibilities used in the project to appoint individuals to the acquisition workforce and whether those appointments are based on competitive procedures and recognize veteran's preferences.

(C) An explanation of the flexibilities used in the project to develop a performance appraisal system that recognizes excellence in performance and offers opportunities for improvement.

(D) The steps taken to ensure that such system is fair and transparent for all employees in the project.

(E) How the project allows the organization to better meet mission needs.

(F) An analysis of how the flexibilities in subparagraphs (B) and (C) are used, and what barriers have been encountered that inhibit their use.

(G) Whether there is a process for—

(i) ensuring ongoing performance feedback and dialogue among supervisors, managers, and employees throughout the performance appraisal period; and

(ii) setting timetables for performance appraisals.

(H) The project's impact on career progression.

(I) The project's appropriateness or inappropriateness in light of the complexities of the workforce affected.

(J) The project's sufficiency in terms of providing protections for diversity in promotion and retention of personnel.

(K) The adequacy of the training, policy guidelines, and other preparations afforded in connection with using the project.

(L) Whether there is a process for ensuring employee involvement in the development and improvement of the project.

(3) The first assessment under this subsection shall be completed not later than September 30, 2012. The second and final assessment shall be completed not later than September 30, 2016. The Secretary shall submit to the covered congressional committees a copy of each assessment within 30 days after receipt by the Secretary of the assessment.

(f) COVERED CONGRESSIONAL COMMITTEES.—In this section, the term “covered congressional committees” means—

(1) the Committees on Armed Services of the Senate and the House of Representatives;

(2) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(3) the Committee on Oversight and Government Reform of the House of Representatives.

(g) TERMINATION OF AUTHORITY.—The authority to conduct a demonstration program under this section shall terminate on ~~September 30, 2020~~ December 31, 2022.

(h) CONVERSION.—Within 6 months after the authority to conduct a demonstration project under this section is terminated as provided in subsection (g), employees in the project shall convert to the civilian personnel system created pursuant to section 9902 of title 5.

Section 810, the purpose of the Defense Acquisition Workforce Development Fund (DAWDF) (10 U.S.C. 1705) is to ensure that the Department of Defense (DoD) acquisition workforce has the capacity, in both personnel and skills, needed to perform properly its mission, provide appropriate oversight of contractor performance, and ensure that the Department receives the best value for expenditure of public resources. The DAWDF is a critical enabler for the Defense Acquisition Workforce strategy to sustain responsibly and continuously improve the workforce. The DAWDF has been in operation since 2008, and was extended indefinitely by section 841 of the National Defense Authorization Act for Fiscal Year 2016 NDAA at an annual $500 million level. Clarification pertaining to contractor support is needed to enhance consistency and promote effective use of the DAWDF across DoD. This proposal would clarify the authority and allow use of the DAWDF to make payments to contractors, in addition to training, for support of human capital and talent management.

Budget Implications: All DAWDF costs are funded under existing statutory (10 U.S.C. 1705) levels. The amount of the DAWDF impacted by this language is captured below.

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
DAWDF	5.0	5.0	5.0	5.0	5.0	Defense Acquisition Workforce Development Fund		

Changes to Existing Law: This proposal would make the following changes to section 1705 of title 10, United States Code:

§ 1705. Department of Defense Acquisition Workforce Development Fund

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a fund to be known as the "Department of Defense Acquisition Workforce Development Fund" (in this section referred to

as the "Fund") to provide funds, in addition to other funds that may be available, for the recruitment, training, and retention of acquisition personnel of the Department of Defense.

(b) PURPOSE.—The purpose of the Fund is to ensure that the Department of Defense acquisition workforce has the capacity, in both personnel and skills, needed to properly perform its mission, provide appropriate oversight of contractor performance, and ensure that the Department receives the best value for the expenditure of public resources.

(c) MANAGEMENT.—The Fund shall be managed by a senior official of the Department of Defense designated by the Under Secretary of Defense for Acquisition, Technology, and Logistics for that purpose, from among persons with an extensive background in management relating to acquisition and personnel.

(d) ELEMENTS.—

(1) IN GENERAL.—The Fund shall consist of amounts as follows:

(A) Amounts credited to the Fund under paragraph (2).

(B) Amounts transferred to the Fund pursuant to paragraph (3).

(C) Any other amounts appropriated to, credited to, or deposited into the Fund by law.

(2) CREDITS TO THE FUND.—(A) There shall be credited to the Fund an amount equal to the applicable percentage for a fiscal year of all amounts expended by the Department of Defense in such fiscal year for contract services from amounts available for contract services for operation and maintenance.

(B) Subject to paragraph (4), not later than 30 days after the end of the first quarter of each fiscal year, the head of each military department and Defense Agency shall remit to the Secretary of Defense, from amounts available to such military department or Defense Agency, as the case may be, for contract services for operation and maintenance, an amount equal to the applicable percentage for such fiscal year of the amount expended by such military department or Defense Agency, as the case may be, during such fiscal year for services covered by subparagraph (A). Any amount so remitted shall be credited to the Fund under subparagraph (A).

(C) For purposes of this paragraph, the applicable percentage for a fiscal year is the percentage that results in the credit to the Fund of $500,000,000 in ~~each~~ **such** fiscal year.

(D) The Secretary of Defense may reduce the amount specified in subparagraph (C) for a fiscal year if the Secretary determines that the amount is greater than is reasonably needed for purposes of the Fund for such fiscal year. The Secretary may not reduce the amount for a fiscal year to an amount that is less than $400,000,000.

(3) TRANSFER OF CERTAIN UNOBLIGATED BALANCES.—To the extent provided in appropriations Acts, the Secretary of Defense may, during the 36-month period following the expiration of availability for obligation of any appropriations made to the Department of Defense for procurement, research, development, test, and evaluation, or operation and maintenance, transfer to the Fund any unobligated balance of such appropriations. Any amount so transferred shall be credited to the Fund.

(4) ADDITIONAL REQUIREMENTS AND LIMITATIONS ON REMITTANCES.—***

* * * * * * *

(e) AVAILABILITY OF FUNDS. —

(1) IN GENERAL.—Subject to the provisions of this subsection, amounts in the Fund shall be available to the Secretary of Defense for expenditure, or for transfer to a military department or Defense Agency, for the recruitment, training, and retention of acquisition personnel of the Department of Defense for the purpose of the Fund, including for the provision of training and retention incentives to the acquisition workforce of the Department. In the case of temporary members of the acquisition workforce designated pursuant to subsection (h)(2), such funds shall be available only for the limited purpose of providing training in the performance of acquisition-related functions and duties.

(2) PROHIBITION.—Amounts in the Fund may not be obligated for any purpose other than purposes described in paragraph (1) or otherwise in accordance with this subsection.

(3) GUIDANCE.—***

(4) LIMITATION ON PAYMENTS TO OR FOR CONTRACTORS.—Amounts in the Fund shall not be available for payments to contractors or contractor employees, other than for the purpose of—

(A) providing advanced training to Department of Defense employees; **and**

(B) support of human capital and talent management of the acquisition workforce, including benchmarking studies, assessments, and requirements planning.

(5) ***

* * * * * * *

(f) ANNUAL REPORT.—Not later than ~~120 days after the end of~~ **February 1** each ~~fiscal~~ year, the Secretary of Defense shall submit to the congressional defense committees a report on the operation of the Fund during ~~such~~ **the preceding** fiscal year. Each report shall include, for the fiscal year covered by such report, the following:

(1) A statement of the amounts remitted to the Secretary for crediting to the Fund for such fiscal year by each military department and Defense Agency, and a statement of the amounts credited to the Fund for such fiscal year.

(2) A description of the expenditures made from the Fund (including expenditures following a transfer of amounts in the Fund to a military department or Defense Agency) in such fiscal year, including the purpose of such expenditures.

(3) A description and assessment of improvements in the Department of Defense acquisition workforce resulting from such expenditures.

(4) Recommendations for additional authorities to fulfill the purpose of the Fund.

(5) A statement of the balance remaining in the Fund at the end of such fiscal year.

(g) EXPEDITED HIRING AUTHORITY.—For purposes of sections 3304, 5333, and 5753 of title 5, the Secretary of Defense may—

(1) designate any category of acquisition workforce positions of ~~**of**~~ positions in the acquisition workforce**~~, as defined in subsection (h),~~** as positions for which there exists a shortage of candidates or there is a critical hiring need; and

(2) utilize the authorities in such sections to recruit and appoint qualified persons directly to positions so designated.

(h) ACQUISITION WORKFORCE DEFINED.—In this section, the term "acquisition workforce" means the following:

(1) Personnel in positions designated under section 1721 of this title as acquisition positions for purposes of this chapter.

(2) Other military personnel or civilian employees of the Department of Defense who-

(A) contribute significantly to the acquisition process by virtue of their assigned duties; and

(B) are designated as temporary members of the acquisition workforce by the Under Secretary of Defense for Acquisition, Technology, and Logistics, or by the senior acquisition executive of a military department, for the limited purpose of receiving training for the performance of acquisition-related functions and duties.

Section 811, the Secretary of the Navy has researched the problem of over age contracts that have not been closed out. In the process, the Department has identified a large number of contracts and Basic Ordering Agreements to design, construct, repair, or support the construction or repair of Navy submarines with original values totaling $9.96 billion. This led to the realization that most of these contracts could be closed out most efficiently by working with the contractor to identify any remaining balances and to off-set such balances across CLINS and across contracts. Records indicated that the Department has approximately 90 such prime contracts and Basic Ordering Agreements (BOAs) with General Dynamics, Electric Boat (GDEB) Inc. entered into between 1974 and 1998 which are not closed out. These contracts and BOAs are complete and there are no further supplies or services deliverables due under the contract terms and conditions, but they remain open because of an unreconciled balance associated with the level of detail at the appropriation year and type. In many circumstances, the time and effort required to determine the cause of the out-of-balance condition may be disproportionate to the amount of the discrepancy. Moreover, the total outstanding balance on this group of contracts once balances are off-set across CLINS and across these contracts is only .05% of the total original value of the contracts.

Settlement of contracts with unreconciled balances often is necessary where a contractor may have been under or overpaid, but under many of these contracts neither the contractor nor the Government has any evidence of under or overpayment aside from the fact that the accounts do not reconcile. SUPSHIP Groton and GDEB have made a herculean effort to reconcile the balances on these 90 contracts and have arrived at the specific amount owed by GDEB to the Government for overpayments on these contracts which is $581,803. Using a streamlined approach that determined that costs and fees/profits billed on these contracts are allowable and appropriate, SUPSHIP Groton has incurred $212,219 in sunk direct labor costs to arrive at the

agreed amount. SUPSHIP estimates that, absent legislative relief, an additional $747,210 in direct labor costs would be required to close these contracts using traditional methods. Absent legislative relief, DFAS would incur additional direct labor costs of at least $151,637 to close finance and accounting records and DCAA would incur additional direct labor costs of at least $739,500 to evaluate final vouchers for these contracts. Legislative relief would thus provide the Secretary of the Navy authority to close these contracts for an amount that has been agreed to by GDEB and the Government and save the Government at least $1.6 million in direct labor costs related to administrative contract closeout actions. This estimate is the minimum government cost savings based on average closing costs of typical contracts, which has not been increased to reflect the extreme age of these contracts. Actual costs to the government to close these contracts absent legislative relief are likely to be much higher. The contractor estimates that it would incur costs of approximately $567 thousand to close these contracts using traditional methods, absent legislative relief. GDEB's payment of $581,803 will be deposited into the Treasury as Miscellaneous Receipts.

Closeout of Contracts has become a Department priority. Attempts are being made to reconcile financial records on completed contracts. The closeout of some of these older contracts has been hindered by lost or destroyed documentation. Other of these old contracts have an unreconciled balance of less than $25,000, and the resources needed to close these contracts would far exceed that *de minimis* amount of $25,000 or less. This provision will allow the administrative closeout of all these contracts without the need to waste further government resources attempting to reconcile the balances. It will also provide an exception to both the Purpose Act and the Anti-deficiency Acts to allow the offset of any remaining contract balances across CLINs within a contract and across contracts.

Budget Implications: This proposal, when enacted, will result in a one-time cost avoidance of at least $1.6 million and a one-time payment to the U.S. Treasury of approximately $0.58 million. This cost avoidance (not savings) is achieved by relieving the need for staff-work on these closed contracts, and therefore no programmatic budget reductions are projected to result during the period of the FYDP.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	$.58					Treasury			

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

Section 812 would replace the authority provided in section 804 of the National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136 as amended by section 852 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375) and section 831 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364), which expired on September 30, 2007. The Department of Defense was unable to fully use that authority due to problematic language in the statute which resulted in Contracting Officers and Certifying Officials fear of liability in the event they closed contracts

under that authority. However, the problem that statute addressed to reduce the backlog of overage contracts by granting authority to close out old unreconciled contracts remains. Maintaining these old, completed but open contracts is a drain on both Government and contractor resources. The proposal would enable the Department of Defense to close out contracts where records have been lost or destroyed or where the time and effort required to determine the cause of an out-of-balance condition is disproportionate to the dollar amount of the discrepancy making it economically unfeasible to reconcile.

This proposal would allow the Department to close financial accounts for contracts executed prior to fiscal year 2000 for which the expense or effort to determine the amount owed is disproportionate to the amount at issue through a negotiated settlement. The contracts covered by this proposal are at least 16 years old and have no further supplies or services deliverables due under the terms and conditions of the contract. It is necessary to close out these contracts where a contractor may have been under or overpaid, but neither the contractor nor the Government has sufficient evidence of under or overpayment to support reconciliation, aside from the fact that the accounts do not reconcile.

Closeout of contracts and reconciliation of accounts has become a Department priority as part of its effort to meet auditability standards. The Department is proposing a flexible approach to eliminate these very old contracts that have relatively low dollar balances. Closing such old contracts using traditional methods requires an inordinate amount of work for low return, due to the difficulty of accessing records that are lost, destroyed, or not available in electronic form. For example, the Department has been working with one contractor for over two years to close out a large group of very old contracts and has documented that it would cost the government at least $1.6 million dollars to complete administrative closeout of this set of contracts using traditional methods, for which the final balance owed by the contractor when all the balances are off-set is only approximately $580,000.

In short, the proposal would permit the Department to clean up its contracts and financial accounts for contracts and to avoid waste.

Budget Implications: This proposal will result in an authority that will achieve cost avoidance, when exercised. This cost avoidance (not savings) is achieved by relieving the need for staff-work on old and expired contracts. Therefore, no programmatic budget reductions are projected to result during the period of the FYDP.

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

Section 813 would help to reduce complexity and improve the efficiency and effectiveness of the Federal acquisition process by allowing service contractors seeking to become contract holders under multiple award task order contracts to qualify to sell services based on non-price or cost factors if price or cost is considered prior to the award of every task order. Focusing on non-price factors at the time of initial contract award and allowing pricing to be negotiated as tasks are competed would reduce burden for both contractors and government evaluators without diluting the effectiveness of the up-front competition among offerors seeking to become contract holders.

Specifically, the proposal would amend title 41, United States Code, with respect to civilian contracting, and title 10, United States Code, with respect to defense contracting, to provide an exception to the existing statutory requirement to include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals for all contracts. The exception would only apply, if the Government elects at its discretion to invoke for a given solicitation, to multiple award task or delivery order contracts to acquire services. Furthermore, the exception would only apply in those instances where the Government intends to make a contract award to each qualifying offeror, thus affording maximum opportunity for effective competition at the task order level. An offeror would be qualified only if it is a responsible source, submits a proposal that conforms to the requirements of the solicitation, and is a source that the contracting officer has no reason to believe would likely submit other than fair and reasonable pricing for orders.

Today, the vast majority of government contractors sell common, repetitive services to the government through multiple award contracts and the Multiple Award Schedules. In FY 2014, more than 51 percent of all service contract dollars obligated for FY 2014 were executed under these types of contracts. These contract vehicles have become increasingly popular tools for the acquisition workforce over the years because the ability to award task orders after conducting simplified competitions among prequalified contractors saves them the time and administrative cost of having to go into the marketplace to conduct a full-blown competition open to any interested source each time an every-day need arises.

Despite the efficiencies of multiple award contracts, current processes for competing to become a multiple award contract or Schedules contract holder have proven to be unnecessarily complicated for both contractors and the Government with respect to pricing because statutory provisions in the Competition in Contracting Act (CICA) require agencies to consider cost or price as a factor in the evaluation of proposals. These requirements, which went into effect in the 1980s, pre-date the authority most agencies use to award multiple award contracts, which was codified as part of the Federal Acquisition Streamlining Act of 1994. Insight gained after 1994 (i.e., well after the enactment of CICA), has identified certain procedural challenges. In particular, the evaluation of cost or price as a source selection factor in determining which offerors will receive initial contract awards for service contracts is problematic at best and is, in many cases for all intents and purposes, meaningless because many, if not most, services do not lend themselves to commoditized pricing that might be evaluated against an independent government cost estimate. As a result, most up-front cost proposals that offerors must develop are a poor indicator of whether a contractor is likely to provide good value when a specific task arises. Despite this, both the Government Accountability Office and the Court of Federal Claims have held that agencies must consider cost or price in the initial award of contracts. See, for example, SERCO INC. v. United States, 81 Fed. Cl. 463, 492 (COFC) (March 2008) citing MIL Corp., 2004 WL 3190217, at 7.

There are two primary techniques that the GAO has recognized as legitimate methods to evaluate cost and price. Each technique has to account for the “indefinite” nature of an indefinite delivery/indefinite quantity (IDIQ) arrangement. By definition, the agency does not know specifically at the time the award is made to what extent the contract vehicle will be used to

place orders. One technique is for the agency to structure solicitation to instruct offerors to fill in a table in their proposal listing their labor rates for services. Another method is to instruct offerors to respond to a hypothetical ("sample") task.

When using the rate table technique, agencies must develop estimates of the quantity and mix of various labor hours based on historical experience of similar services acquired in the past. These estimates reflect what the agency expects to experience over the life of the new contract. For evaluation purposes, the agency multiplies its estimated hours against the offerors' proposed rates to arrive at the evaluated price. A similar technique is used to establish price reasonableness on Federal Supply Schedule (FSS) contracts. The Government compares a contractor's prices and price-related terms and conditions with those offered to their other customers. Through analysis and negotiations, the Government establishes a favorable pricing relationship in comparison to one of the contractor's customers (or category of customers) and then maintains that pricing relationship for the life of the contract. In order to carry out this practice, the Government collects pricing information and related terms and conditions through Commercial Sales Practices (CSP) disclosures and enforces the pricing relationship through General Services Administration Acquisition Regulation (GSAR) clause 552.238-75, Price Reductions.

Although the rate table method has been accepted by the GAO as a valid means to evaluate price in multiple award IDIQ contracts, the technique is flawed because it presumes that a given set of fully loaded labor rates can be meaningfully evaluated by comparing one offeror's set to another's. The flaw lies in the fact that each prospective offeror has its own unique array of labor categories and its own unique disclosure statement that governs how work will be proposed and executed. Despite an agency's best attempt to develop and normalize a common set of labor rate categories from which each offeror will be required to propose, this set will invariably not correlate to the company's actual labor structure. As a result, there is an artificial basis for comparison. Furthermore, the rate table technique runs counter to the statutory preference for performance-based service contracting. It should not matter how a particular offeror's proposed fully burdened labor rates compare another's if the awardees are required to propose bottom line firm fixed prices to perform task orders under performance-based terms. Since the rate table technique simply multiplies the offerors' rates by the Government's estimated hours, the evaluated price does not reflect any consideration for the fact that one offeror might ultimately bid an innovative or efficient means to accomplish the work under a particular task order.

An alternative to the rate table method is the use of sample tasks. When an agency lacks historical data from which to establish an estimate of the mix and quantity of labor hours to be expended over the life of the IDIQ contract, it may employ the sample task technique as a means to evaluate cost or price (as well as technical factors). The GAO found this approach may provide a reasonable basis to evaluate cost, even if it results in substantial variations in offeror responses (see Matter of High-Point Schaer, B-242616, May 28, 1991).

However, in another case, the GAO sustained the protestor's contention that the agency's price evaluation to acquire travel services under a multiple award IDIQ arrangement was flawed because the agency's request for proposals did not require offerors to propose binding prices for which they would be required to honor in future task order proposals (see In Matter of CW

Government Travel Inc.—Reconsideration, B-295530, July 25, 2005 at 10). The GAO held that "[b]ecause the sample task pricing is not binding, a price realism and reasonableness analysis based on that pricing provides no meaningful assessment of the likely cost to the government of an offeror's proposal." When offerors are held bound under the resultant IDIQ contract to the rates proposed in their sample task order, agencies are able to assert that they fulfilled the current statutory requirement to evaluate cost or price to the Government. As a technique, agencies typically incorporate sample task rates as ceiling rates in the resultant contract, which enables awardees to bid lower rates (if they desire) in individual task order proposals. However, agencies often structure IDIQ service contracts to afford flexibility to award task orders under the full range of contract types and when cost reimbursable orders are used, it is not appropriate to cap the order rates at the "ceiling" rates bid in the sample task. Notably, in the aforementioned case, the GAO decision stated, "We acknowledge that the evaluation of price or cost in the award of an ID/IQ 'umbrella' contract can be challenging, particularly in the procurement of services, because the more meaningful price competition may take place at the time individual task or delivery orders are to be issued."

Relieving the requirement to account for cost or price when evaluating proposals for the initial award of any of the two categories of covered IDIQ contracts will enable procurement officials to focus their energy on establishing and evaluating the non-price factors that will result in more meaningful distinctions among offerors. Source selection officials typically spend (collectively) hundreds of hours evaluating cost and price as a factor in awarding any given multiple award IDIQ contract to acquire services. This is non-value added effort since the meaningful evaluation of cost and price takes place at the point in time when subsequent task or delivery order proposals are evaluated.

Budget Implications: The proposal only addresses procurement processes and not amounts appropriated for the procurement of items or services.

Changes to Existing Law: The proposal would amend section 3306 of title 41, United States Code, and section 2305 of title 10, United States Code, as follows:

TITLE 41, UNITED STATES CODE

§3306. Planning and solicitation requirements

(a) PLANNING AND SPECIFICATIONS.—

(1) PREPARING FOR PROCUREMENT.—In preparing for the procurement of property or services, an executive agency shall—

(A) specify its needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

(B) use advance procurement planning and market research; and

(C) develop specifications in the manner necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

(2) REQUIREMENTS OF SPECIFICATIONS.—Each solicitation under this division shall include specifications that—

(A) consistent with this division, permit full and open competition; and

(B) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the executive agency or as authorized by law.

(3) TYPES OF SPECIFICATIONS.—For the purposes of paragraphs (1) and (2), the type of specification included in a solicitation shall depend on the nature of the needs of the executive agency and the market available to satisfy those needs. Subject to those needs, specifications may be stated in terms of—

(A) function, so that a variety of products or services may qualify;

(B) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

(C) design requirements.

(b) CONTENTS OF SOLICITATION.—In addition to the specifications described in subsection (a), each solicitation for sealed bids or competitive proposals (other than for a procurement for commercial items using special simplified procedures or a purchase for an amount not greater than the simplified acquisition threshold) shall at a minimum include—

(1) a statement of—

(A) all significant factors and significant subfactors that the executive agency reasonably expects to consider in evaluating sealed bids (including price) or competitive proposals (including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors); and

(B) the relative importance assigned to each of those factors and subfactors; and

(2)(A) in the case of sealed bids—

(i) a statement that sealed bids will be evaluated without discussions with the bidders; and

(ii) the time and place for the opening of the sealed bids; or

(B) in the case of competitive proposals-

(i) either a statement that the proposals are intended to be evaluated with, and the award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and the award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and

(ii) the time and place for submission of proposals.

(c) EVALUATION FACTORS.—

(1) IN GENERAL.—In prescribing the evaluation factors to be included in each solicitation for competitive proposals, an executive agency shall—

(A) establish clearly the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

(B) except as provided in paragraph (3), include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals; and

(C) except as provided in paragraph (3), disclose to offerors whether all evaluation factors other than cost or price, when combined, are—

(i) significantly more important than cost or price;

(ii) approximately equal in importance to cost or price; or

(iii) significantly less important than cost or price.

(2) RESTRICTION ON IMPLEMENTING REGULATIONS.—Regulations implementing paragraph (1)(C) may not define the terms "significantly more important" and "significantly less important" as specific numeric weights that would be applied uniformly to all solicitations or a class of solicitations.

(3) EXCEPTIONS FOR CERTAIN INDEFINITE DELIVERY, INDEFINITE QUANTITY MULTIPLE-AWARD CONTRACTS AND CERTAIN FEDERAL SUPPLY SCHEDULE CONTRACTS.—If the head of an agency issues a solicitation for multiple task or delivery order contracts under section 4103 of this title, or a Federal supply schedule contract under section 501(b) of title 40 and section 152(3) of this title, for the same or similar services and intends to make a contract award to each qualifying offeror—

(A) cost or price to the Federal Government need not, at the Government's discretion, be considered under subparagraph (B) of paragraph (1) as an evaluation factor for the contract award; and

(B) if, pursuant to subparagraph (A), cost or price to the Federal Government is not considered as an evaluation factor for the contract award—

(i) the disclosure requirement of subparagraph (C) of paragraph (1) shall not apply; and

(ii) cost or price to the Federal Government shall be considered in conjunction with the issuance of a task or delivery order under any contract resulting from the solicitation that is awarded pursuant to section 501(b) of title 40 and section 152(3) of this title.

(4) QUALIFYING OFFEROR DEFINED.—In paragraph (3), the term "qualifying offeror" means an offeror that—

(A) is determined to be a responsible source;

(B) submits a proposal that conforms to the requirements of the solicitation; and

(C) the contracting officer has no reason to believe would likely offer other than fair and reasonable pricing.

(d) ADDITIONAL INFORMATION IN SOLICITATION.—This section does not prohibit an executive agency from—

(1) providing additional information in a solicitation, including numeric weights for all evaluation factors and subfactors on a case-by-case basis; or

(2) stating in a solicitation that award will be made to the offeror that meets the solicitation's mandatory requirements at the lowest cost or price.

(e) LIMITATION ON EVALUATION OF PURCHASE OPTIONS.—An executive agency, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in the solicitation a clause providing for the evaluation of prices for options to purchase additional property or services under the contract unless the executive agency has determined that there is a reasonable likelihood that the options will be exercised.

(f) ***

TITLE 10, UNITED STATES CODE

§2305. Contracts: planning, solicitation, evaluation, and award procedures

(a)(1)(A) In preparing for the procurement of property or services, the head of an agency shall—

(i) specify the agency's needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

(ii) use advance procurement planning and market research; and

(iii) develop specifications in such manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

(B) Each solicitation under this chapter shall include specifications which—

(i) consistent with the provisions of this chapter, permit full and open competition; and

(ii) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law.

(C) For the purposes of subparagraphs (A) and (B), the type of specification included in a solicitation shall depend on the nature of the needs of the agency and the market available to satisfy such needs. Subject to such needs, specifications may be stated in terms of—

(i) function, so that a variety of products or services may qualify;

(ii) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

(iii) design requirements.

(2) In addition to the specifications described in paragraph (1), a solicitation for sealed bids or competitive proposals (other than for a procurement for commercial items using special simplified procedures or a purchase for an amount not greater than the simplified acquisition threshold) shall at a minimum include—

(A) a statement of—

(i) all significant factors and significant subfactors which the head of the agency reasonably expects to consider in evaluating sealed bids (including price) or competitive proposals (including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors); and

(ii) the relative importance assigned to each of those factors and subfactors; and

(B)(i) in the case of sealed bids—

(I) a statement that sealed bids will be evaluated without discussions with the bidders; and

(II) the time and place for the opening of the sealed bids; or

(ii) in the case of competitive proposals—

(I) either a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and

(II) the time and place for submission of proposals.

(3)(A) In prescribing the evaluation factors to be included in each solicitation for competitive proposals, the head of an agency—

(i) shall clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including

technical capability, management capability, prior experience, and past performance of the offeror);

(ii) shall (except as provided in subparagraph (C)) include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals); and

(iii) shall (except as provided in subparagraph (C)) disclose to offerors whether all evaluation factors other than cost or price, when combined, are—

(I) significantly more important than cost or price;

(II) approximately equal in importance to cost or price; or

(III) significantly less important than cost or price.

(B) The regulations implementing clause (iii) of subparagraph (A) may not define the terms "significantly more important" and "significantly less important" as specific numeric weights that would be applied uniformly to all solicitations or a class of solicitations.

(C) If the head of an agency issues a solicitation for multiple task or delivery order contracts under section 2304a(d)(1)(B) of this title for the same or similar services and intends to make a contract award to each qualifying offeror—

(i) cost or price to the Federal Government need not, at the Government's discretion, be considered under clause (ii) of subparagraph (A) as an evaluation factor for the contract award; and

(ii) if, pursuant to clause (i), cost or price to the Federal Government is not considered as an evaluation factor for the contract award—

(I) the disclosure requirement of clause (iii) of subparagraph (A) shall not apply; and

(II) cost or price to the Federal Government shall be considered in conjunction with the issuance pursuant to section 2304c(b) of this title of a task or delivery order under any contract resulting from the solicitation.

(D) In subparagraph (C), the term "qualifying offeror" means an offeror that—

(i) is determined to be a responsible source;

(ii) submits a proposal that conforms to the requirements of the solicitation; and

(iii) the contracting officer has no reason to believe would likely offer other than fair and reasonable pricing.

(4) Nothing in this subsection prohibits an agency from—

(A) providing additional information in a solicitation, including numeric weights for all evaluation factors and subfactors on a case-by-case basis; or

(B) stating in a solicitation that award will be made to the offeror that meets the solicitation's mandatory requirements at the lowest cost or price.

(5) The head of an agency, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in such solicitation a clause providing for the evaluation of prices for options to purchase additional property or services under the contract unless the head of the agency has determined that there is a reasonable likelihood that the options will be exercised.

(b) ***

* * * * * * *

Section 814 would increase the micro-purchase threshold (MPT) in Government procurements from $3,000 to $10,000 so that federal agencies would have the option to authorize personnel, as appropriate, to have higher limits on their Government purchase card, referred to hereafter as "purchase card," to facilitate easy and administratively efficient purchasing of small dollar items. This increase would affect less than one percent of federal contract spending, but could allow hundreds of thousands of transactions to be conducted more efficiently. This proposal would not make changes to the thresholds in the Davis-Bacon Act or the Service Contract Act. Nor would it change the threshold levels that are authorized during contingency operations or certain other types of emergencies.

Purchase cards give agency end users an efficient tool to make simple purchases themselves and, at the same time, offer a number of additional benefits for both the agency and its vendors. In the two decades since the MPT was established, purchase cards have reduced transaction costs for government payment offices by lowering the number of budgetary/accounting entries that need to be processed in financial management systems, allowed agencies to earn rebates, and helped vendors receive timely payment without the burden of having to process government invoices. Equally important, by putting purchase cards into the hands of properly trained end users to make purchase directly, the burden of making micro-purchases has largely been lifted from the shoulders of contracting officers, allowing them to instead give greater attention to larger, more complex procurements, where their acquisition training and expertise can be put to better use and have greater impact.

In 2010, the MPT was adjusted for inflation from $2,500 to $3,000 and would be adjusted again this year to $3,500, pursuant to authority provided in 41 U.S.C. 1908. While these adjustments will help agencies to leverage the efficiencies of the purchase card for additional small dollar transactions, there are many needs between $3,000 and $10,000 that can be more efficiently acquired with a purchase card in the hands of a trained end user. Some of these routine needs did not exist in the 1990s and therefore were not envisioned when the MPT level was first established, such as those for digital services, including web applications, application program interfaces, simple cloud services, scalable web hosting services, case management, platforms to support on-line interactive dialogues, IT systems monitoring, and tools to measure and improve digital customer experiences -- all of which can be purchased easily by program and IT technical experts through existing government-wide and multi-agency contracts that include pre-negotiated terms and conditions which are well suited for small dollar purchases.

The benefits of purchase cards cannot be realized unless coupled with smart buying practices, such as those that encourage purchases through existing vehicles where they can meet agency needs. For this reason, this proposal would require OMB to update Appendix B of Circular A-123, *Improving the Management of Government Charge Card Programs*, (herein after referred to as Appendix B) as appropriate, to reflect principles of category management that encourage placement of orders against best in class vehicles and best practices for maximizing opportunities for small businesses, as identified by OMB in its 2011 guidance implementing section 1322 of the Small Business Jobs Act.

Purchase card activity must also be conducted in accordance with strong financial management controls that help agencies detect and prevent fraud, waste and abuse. Accordingly,

the proposal would further require OMB to update Appendix B to reinforce and strengthen existing controls applicable to current government purchase card transactions, appropriately increase the oversight responsibilities of agency management and agency Inspectors General on expenditures in accordance with the Government Charge Card Abuse Prevention Act of 2012, P.L. 112-94, and reporting required by OMB Memorandum M-13-21, which implements the Act, and align these controls with the threshold for mandatory reporting for certain financial transactions.

Appendix B would also establish appropriate limits on the use of convenience checks, not to exceed one half of the micro-purchase threshold. Convenience checks are generally only authorized when a merchant does not accept a purchase card. Appendix B currently includes a chapter on internal controls for convenience checks (Chapter 12). Specifically, convenience checks may be written only to vendors who do not accept the purchase card, for emergency incident response, and for other Agency approved purposes that comply with Public Law 104-134, the Debt Collection Improvement Act of 1996. Controls on the use of convenience checks will be updated not to exceed one half of the micro-purchase threshold, and limits on the use of convenience checks will be identified in Appendix B.

In the past 10 years, Federal agencies have deployed a number of systems and internal controls to reduce the risk of fraud, waste, abuse, and misuse associated with the purchase card. Examples of agency actions include implementation of government-wide metrics for Government charge cards programs under the General Services Administration (GSA) SmartPay program to improve security including purchase card transactions. As part of Federal efforts, GSA SmartPay has made available data analytics and data mining tools provided by servicing banks and brands. The metrics identify potential areas of misuse or fraud for further investigation in categories of disputed charges; single merchant spending; use of data analytics tools; as well as a targeted group of questionable transactions.

Also for the Department of Defense (DoD), the Director of Defense Procurement and Acquisition Policy (DPAP) maintains a robust website on the purchase card at http://www.acq.osd.mil/dpap/pdi/pc/index.html. The website includes current Policy Documents and Guides including the DoD Government Charge Card Guidebook for Establishing and Managing Purchase, Travel, and Fuel Card Programs, dated May 30, 2014. The Guidebook's purpose is to help DoD officials establish and manage charge card programs. As required by Appendix B, DPAP published the Purchase Card Management Plan (2014), which also outlines policies and procedures used by DoD to ensure that the objectives of the DoD's purchase card program are realized and that an effective system of internal controls is in place to mitigate the potential for fraud, misuse, and abuse. The DoD's purchase card policies and procedures comply with the conforming amendments to subsection (b) of section 2784 of title 10, United States Code, as amended by the Government Charge Card Abuse Prevention Act. Additionally, DoD policy requires all cardholders, approving officials, and certifying officials to complete basic purchase card training prior to assuming their official purchase card program roles and responsibilities. Purchase card refresher training is required every two years thereafter. These courses are provided through Defense Acquisition University courses (CLG 001 and CLG 004).

Additionally, DoD has implemented automated oversight systems to provide managers visibility of internal control effectiveness in mitigating the risk of improper purchases. Purchase card participants are using DoD-wide systems to improve the accountability of their purchase card programs, such as the automated systems (e.g. Purchase Card Online System (PCOLS)) to audit 100 percent of all DoD purchase card transactions. Through a set of risk predictive business rules, PCOLS or a similar Navy capability, scores each transaction against data points such as the merchant category code, cardholder spend limits, frequency of purchase card usage, and where the transaction was made. On a monthly basis, these systems flag over 3 percent of transactions that score in the highest risk categories, and alert the installation program coordinator to conduct an independent review. The system also randomly flags about 1 percent of all other transactions for review by the cardholder's immediate supervisor, or someone in his or her chain of command. Each identified transaction is reviewed and addressed by the proper authorities (e.g., the cardholder's commander, base legal office, etc.). If it is determined that due diligence was not exercised by a cardholder, a variety of remedies and punitive actions exist. These include mandatory remedial training, card suspension, and other disciplinary actions under applicable directives, regulations, Federal Law, and the Uniform Code of Military Justice or civilian disciplinary actions. In addition, these systems are used to support quarterly and semi-annual statistical and violation reports to OSD, which in turn submits the report to the OMB and the GSA for analysis and policy recommendations.

Updates to Appendix B will be informed by the agency experiences and risk assessments described above along with reports and audits from agencies and Inspectors General and other applicable reviews. The Appendix will continue to hold agencies responsible for ensuring authorizations for card holders are appropriate for that individual's responsibilities and activities. As a result, if this proposal is enacted, individual purchase card limits would not be raised automatically. Instead, agencies would review existing limits and make adjustments based on organizational need and the responsibilities of the end user. For instance, an agency may leave unchanged an office manager's current authorization level of $1,000 to make purchase card transactions for office supplies from the OS3 contract established under the Federal Strategic Sourcing Initiative if this limit remains sufficient in light of the organization's needs for office supplies. By contrast, the agency may raise the purchase card limits for technical personnel in the agency's digital strategy office for the reasons stated above, so that these users can make purchases directly, rather than burdening their contracting officer for a rapid decision and clearance to place an order. In situations where contracting officers continue making purchases for the agency under $10,000, they will still benefit by being able to take advantage of the efficiencies offered by the purchase card in conducting these transactions.

Finally, GSA will continue to ensure there is appropriate transparency of purchase card activity on USASpending.gov so information on use of the purchase card below the micro-purchase threshold is available to the public, consistent with agency security requirements.

Budgetary 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 addresses the micro-purchase dollar threshold and would not increase the overall budget requirements of the Department of Defense or other agencies.

Changes to Existing Law: This proposal would amend title 41, United States Code, as follows:

TITLE 41, UNITED STATES CODE

§ 1902. Procedures applicable to purchases below micro-purchase threshold

(a) DEFINITION.—For purposes of this section, the micro-purchase threshold is ~~**$3,000**~~ **$10,000**.

(b) COMPLIANCE WITH CERTAIN REQUIREMENTS AND NONAPPLICABILITY OF CERTAIN AUTHORITY.—

(1) COMPLIANCE WITH CERTAIN REQUIREMENTS.—The head of each executive agency shall ensure that procuring activities of that agency, when awarding a contract with a price exceeding the micro-purchase threshold, comply with the requirements of section 8(a) of the Small Business Act (15 U.S.C. 637(a)), section 2323 of title 10, and section 7102 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, 15 U.S.C. 644 note).

(2) NONAPPLICABILITY OF CERTAIN AUTHORITY.—The authority under part 13.106(a)(1) of the Federal Acquisition Regulation (48 C.F.R. 13.106(a)(1)), as in effect on November 18, 1993, to make purchases without securing competitive quotations does not apply to a purchase with a price exceeding the micro-purchase threshold.

(c) NONAPPLICABILITY OF CERTAIN PROVISIONS.—An executive agency purchase with an anticipated value of the micro-purchase threshold or less is not subject to section 15(j) of the Small Business Act (15 U.S.C. 644(j)) and chapter 83 of this title.

(d) PURCHASES WITHOUT COMPETITIVE QUOTATIONS.—A purchase **with a price** not greater than ~~**$3,000**~~ **the micro-purchase threshold** may be made without obtaining competitive quotations if an employee of an executive agency or a member of the armed forces, authorized to do so, determines that the price for the purchase is reasonable.

(e) EQUITABLE DISTRIBUTION.—Purchases **with a price** not greater than ~~**$3,000**~~ **the micro-purchase threshold** shall be distributed equitably among qualified suppliers.

(f) IMPLEMENTATION THROUGH FEDERAL ACQUISITION REGULATion.—This section shall be implemented through the Federal Acquisition Regulation.

Section 815 would provide the Department of Defense (DoD), the Department of Homeland Security (DHS), and the General Services Administration (GSA) new authority on a pilot program basis to acquire innovative commercial items using general solicitation competitive procedures. Currently, 10 USC 2302 permits DoD to use general solicitation competitive procedures only for Science & Technology (S&T) research proposals (10 U.S.C.2302(2)(B)) and research proposals solicited pursuant to section 9 of the Small Business Act (15 USC 638) (10 U.S.C.2302(2)(E)). Similar limitations apply to DHS and GSA. Use of

such authority for acquisition of innovative commercial items will support DoD, DHS, and GSA efforts to access and adopt technical innovations from non-traditional sources, such as Silicon Valley startup companies and small commercial firms. A pilot program, to be known as the "commercial solutions opening" (CSO) pilot program, is needed because protracted acquisition timelines do not fit the business model of companies that produce innovative commercial items.

The Competition in Contracting Act and the DoD statute on competition, 10 U.S.C. 2302, and parallel authorites in title 41 for DHS and GSA define "competition" to include the general solicitation technique used to obtain proposals through a Broad Agency Announcement (BAA). In the fundamental scientific or engineering research area where a requirement is incapable of specific definition, BAAs offer a considerable advantage over traditional Requests for Proposals in that they afford offerors the maximum opportunity to propose specific tasks and a corresponding technical approach of their own choosing in response to a broadly-defined area of Government interest. Each proposal is evaluated on its individual merits rather than on a comparative basis, and the Government has considerable latitude in determining which of the submitted proposals it will fund.

However, the BAA solicitation technique is restricted to only basic and applied research and that portion of development not related to a specific system or hardware program. In DoD, for example, this restricts the use of BAAs to projects funded under the Research, Development, Test, and Evaluation (RDT&E) appropriations' S&T budget categories 6.1 (Basic), 6.2 (Applied), and 6.3 (Advanced Technology Development). Although section 819 of the National Defense Authorization Act for Fiscal Year 2010, as amended, provides temporary authority for the Department to use BAAs to acquire projects funded under budget category 6.4 (Advanced Component Development), this authority may only be used by exercising a contract option on a current DoD research project.

Since BAAs are limited to research and cannot be used to address a specific system or hardware solution, a general solicitation technique specific to acquiring innovative commercial items is needed. The CSO pilot program would allow the pilot agencies to access innovative commercial technologies from Silicon Valley startup companies and small commercial firms that otherwise would not do business with them currently. DoD, DHS, and GSA will each issue guidance, in consultation with OMB, to implement this pilot program and also develop appropriate training for offices that may have requirements that can be best met by innovative commercial items.

Budget Implications: The proposal has no budgetary impact. This pilot authority to acquire innovative commercial items using general solicitation competitive procedures would not increase costs to the Government because this proposal only addresses procurement processes.

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

Section 816 would help reduce complexity and increase the efficiency and effectiveness of the federal buying process for small businesses and other businesses that currently sell goods and services to the government in amounts between $150,000 and $500,000. This proposal would increase the simplified acquisition threshold (SAT) under title 41, United States Code so

that acquisitions in this dollar range can take advantage of the same processes as small dollar purchases rather than being subject to the same complex rules required for multi-million dollar contracts.

In 1994, Congress created the simplified acquisition threshold (SAT) to enable agencies to acquire small dollar acquisitions below the threshold with minimum transaction costs and Government-unique burdens. This proposal would increase the SAT from its present value of $150,000 to $500,000. This increase would recognize that transactions in this dollar range typically bear the characteristics of small dollar transactions and should therefore be treated as SAT purchases rather than being subject to government-unique compliance requirements that are applied to multi-million dollar acquisitions.

SAT purchases subject contractors to fewer compliance requirements, including those calling for formal programs, certifications, reporting, and oversight. In addition, SAT purchases allow agencies to transact with interested sources using simplified acquisition procedures, which generally entail shorter solicitations, greater reliance on a contractor's existing product literature, simpler evaluation processes and less detailed documentation. As a result of this relief, contract actions under the SAT often bear a greater similarity to generally accepted commercial practices when compared to larger procurements, which makes it easier and less costly for agencies and contractors to do business.

When the SAT was first created, Congress established the threshold at $100,000. In 2010, the Federal Acquisition Regulatory Council (FAR Council) raised the threshold to $150,000 to reflect inflation, pursuant to authority provided by 41 U.S.C. 1908. While this adjustment has been beneficial, it leaves acquisitions between $150,000 and $500,000 subject to the same compliance requirements as a contract for millions of dollars or more even though these modestly sized acquisitions typically share many of the same characteristics as small dollar acquisitions – namely, the agency has requirements that can be satisfied with commercial products and services. This proposal would raise the threshold to $500,000 so that Defense and civilian agencies could apply a simplified and faster procurement approach to approximately 15,000 more procurement transactions than is possible under the existing threshold of $150,000. An increased SAT would not only lower transaction costs for established contractors (small and large) that are currently selling to the government in this dollar range, but also simplify the learning curve for qualified contractors who wish to sell to the government but have little or no experience doing so. This increase involves only about 1 percent of Federal contracting dollars (about $4.5 billion in fiscal year (FY) 2013), thus leaving the majority of government spending under the compliance controls intended for large contracts.

Budgetary Implications: There would be no budgetary impact as a result of the change in this proposal because the proposal is only an authorization and would not increase the overall budget requirements of the Department or any other Federal agency.

Changes to Existing Law: This proposal would amend title 41, United States Code as follows:

TITLE 41, UNITED STATES CODE

§ 134. Simplified acquisition threshold

In division B, the term "simplified acquisition threshold" means ~~**$100,000**~~ **$500,000**.

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Section 817, The purpose of this proposal is to help reduce complexity and increase the efficiency and effectiveness of the Federal acquisition system to drive greater value in the acquisition of goods and services by facilitating the institutionalization of category management, a strategic practice where Federal contracting for common goods and services is managed by categories of spending across the Government and supported by teams of experts. Institutionalizing category management as an organizing principle of the Federal acquisition system will help the executive branch buy as one, thereby reducing redundant buying actions that increase administrative costs for contractors, allowing agency contracting officers to focus on mission critical acquisitions, and driving greater value in the more than $440 billion of taxpayer dollars spent annually on Federal acquisitions.

Specifically, the proposal would require the Office of Management and Budget (OMB) to issue guidance to executive agencies addressing key principles and best practices of category management, and highlight category management as one of the enumerated responsibilities of agency Chief Acquisition Officers.

In December 2014, the Office of Federal Procurement Policy (OFPP) announced a new model for organizing how the Federal Government manages the acquisition of commonly acquired goods and services, which account for almost two-thirds of the Government's annual contract spending. Historically, the vast majority of common agency needs -- such as for information technology, professional services, medical supplies, human capital, security and protection, and transportation and logistics – have been acquired in a disaggregated manner, often left to the discretion of the more than 3,300 contracting offices across government that are responsible for conducting acquisitions to support their agencies' mission needs. Contracting officers within these geographically dispersed offices are not always aware of – or often do not use – existing vehicles that could meet their agencies' needs. Even when they award new contracts, they generally do not have access to critical prices-paid information, so they risk overpaying for many common commodities.

These challenges have contributed to a sub-optimization of the Government's buying power and diminished the Federal Government's market profile. Fragmented buying has also contributed to the overall complexity and cost of the acquisition process. In addition to driving up transactional costs for contractors, who must currently spend resources competing for redundant contracts, disaggregated buying complicates the government's ability to adopt model contracts and contracting practices for particular types of goods and services that are considered best in class by agencies and contractors. Disaggregated buying of common items also leads to significant duplication of effort among the federal acquisition workforce.

Since 2010, strategic sourcing efforts have helped agencies save more than $500 million by reducing unit prices, applying effective demand management strategies, and avoiding duplicative administrative costs. These accomplishments are impactful and will continue, but a

broader organizational vision is needed to accelerate and successfully manage the many dimensions of interagency collaboration that must occur for the federal government to buy as one – from continuous and organized information sharing to carefully coordinated decision-making between agency executives and better leveraging of workforce expertise. Whereas strategic sourcing is a strategy led by a procurement executive who is working towards an enterprise-wide contract with lower unit cost pricing, category management is a broader framework under which categories are led by senior executives who have deep expertise in their category and act as category CEOs implementing a wide range of business strategies to help agencies meet their mission needs. For example, a former information technology (IT) executive with thirty years industry experience, is managing the IT category – one of the Federal government's largest categories. This category manager is launching a broad set of strategies that include right-sizing software inventories, standardizing PC refresh cycles, and removing contract clauses that hinder information sharing, as well as a more traditional strategic sourcing strategy to create enterprise-wide software licenses.

Just one year after OFPP announced the Government's plan to transform the federal marketplace through category management, noteworthy progress has been made to start breaking down agency silos and acting as the world's largest buyer. By the end of 2016, OMB expects nearly half of all purchases for basic desktops and laptops to be consolidated into three government-wide contracts, and at least 10,000 federal users to take advantage of a new online tool to increase use of existing contracts and further reduce contract duplication. OFPP and GSA also expect to have in place at least four new government-wide software agreements to increase agency use of enterprise license agreements, consistent with direction in the Federal Information Technology Acquisition Reform Act. These agreements will enable the government to make significant inroads in reducing the more than 50,000 transactions that are currently conducted each year to address needs for IT software.

Codifying category management in law will help reinforce these important efforts to make the government a smarter buyer by lowering complexity, increasing efficiency, and improving the value received from federal acquisitions to meet every-day needs. In developing guidance to move agencies away from managing purchases and prices individually across thousands of procurement units and towards managing entire categories of common spend, OMB will seek to promote collaborative decision-making wherever possible. OMB will also ensure that its guidance reflects the Government's continued commitment to maximizing opportunities for small business contractors and strengthened sustainability and accessibility.

Budgetary Implications: There would be no budgetary impact as a result of these legislative changes because the proposal is only an authorization and would not increase the overall budget requirements of the Department or any other Federal agency.

Changes to Existing Law: The proposal would amend section 1702(b) of title 41, United States Code, as follows:

TITLE 41, UNITED STATES CODE

§ 1702. Chief Acquisition Officers and senior procurement executives.

(a)APPOINTMENT OR DESIGNATION OF CHIEF ACQUISITION OFFICER.—The head of each executive agency described in section 901(b)(1) (other than the Department of Defense) or 901(b)(2)(C) of title 31 with a Chief Financial Officer appointed or designated under section 901(a) of title 31 shall appoint or designate a non-career employee as Chief Acquisition Officer for the agency.

(b) AUTHORITY AND FUNCTIONS OF CHIEF ACQUISITION OFFICER.—

(1) PRIMARY DUTY.—The primary duty of a Chief Acquisition Officer is acquisition management.

(2)ADVICE AND ASSISTANCE.—A Chief Acquisition Officer shall advise and assist the head of the executive agency and other agency officials to ensure that the mission of the executive agency is achieved through the management of the agency's acquisition activities.

(3) OTHER FUNCTIONS.—The functions of each Chief Acquisition Officer include—

(A) monitoring the performance of acquisition activities and acquisition programs of the executive agency, evaluating the performance of those programs on the basis of applicable performance measurements, and advising the head of the executive agency regarding the appropriate business strategy to achieve the mission of the executive agency;

(B) increasing the use of full and open competition in the acquisition of property and services by the executive agency by establishing policies, procedures, and practices that ensure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Federal Government's requirements (including performance and delivery schedules) at the lowest cost or best value considering the nature of the property or service procured;

(C) increasing appropriate use of performance-based contracting and performance specifications;

(D) establishing and overseeing a category management program for the agency's spend in consultation with the agency Chief Information Officer, the agency Chief Financial Officer, and other agency officials, as appropriate

~~(D)~~ (E) making acquisition decisions consistent with all applicable laws and establishing clear lines of authority, accountability, and responsibility for acquisition decisionmaking within the executive agency;

~~(E)~~ (F) managing the direction of acquisition policy for the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency;

~~(F)~~ (G) advising the executive agency on the applicability of relevant policy on the contracts of the agency for overseas contingency operations and ensuring the compliance of the contracts and contracting activities of the agency with such policy;

~~(G)~~ (H) developing and maintaining an acquisition career management program in the executive agency to ensure that there is an adequate professional workforce; and

~~(H)~~ (I) as part of the strategic planning and performance evaluation process required under section 306 of title 5 and sections 1105(a)(28), 1115, 1116, and 9703 (added by section 5(a) of Public Law 103–62 (107 Stat. 289)) of title 31—

(i) assessing the requirements established for agency personnel regarding knowledge and skill in acquisition resources management and the adequacy of those requirements for facilitating the achievement of the performance goals established for acquisition management;

(ii) developing strategies and specific plans for hiring, training, and professional development to rectify a deficiency in meeting those requirements; and

(iii) reporting to the head of the executive agency on the progress made in improving acquisition management capability.

(c) SENIOR PROCUREMENT EXECUTIVE.—

(1) DESIGNATION—The head of each executive agency shall designate a senior procurement executive.

(2) RESPONSIBILITY—The senior procurement executive is responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency.

(3) WHEN CHIEF ACQUISITION OFFICER APPOINTED OR DESIGNATED.—For an executive agency for which a Chief Acquisition Officer has been appointed or designated under subsection (a), the head of the executive agency shall—

(A) designate the Chief Acquisition Officer as the senior procurement executive for the executive agency; or

(B) ensure that the senior procurement executive designated under paragraph (1) reports directly to the Chief Acquisition Officer without intervening authority.

(d) OVERSEAS CONTINGENCY OPERATIONS DEFINED.—In this section, the term "overseas contingency operations" means military operations outside the United States and its territories and possessions that are a contingency operation (as that term is defined in section 101(a)(13) of title 10).

Section 818 would implement a recommendation in the President's FY 2016 Budget to help reduce the complexity new entrant contractors face doing business with the Federal Government by establishing a pilot program that creates an easier pathway into the federal marketplace. The pilot would authorize use of an innovation set-aside, where an agency may limit competition, or make an award without competition, to firms with limited or no experience selling to the government but who can deliver innovation needed by federal customers, such as new technologies or ways of solving problems. Relief from government-unique compliance requirements would also be provided.

A key goal of a strong acquisition system is the ability to drive innovation and productivity in the delivery of service to the taxpayer. While many existing federal contractors –

small and large – provide innovative solutions to meet the government's needs, agencies can face significant challenges gaining access to innovative technologies when they are not available under existing contracts or from existing federal contractors. In addition, agencies may find themselves in need of specialized support, perhaps to augment existing capacity within the federal marketplace, such as for modern digital product design or product management support to help carry out the President's Smarter Information Technology Delivery Initiative.

Significant potential exists in companies who are quite small and for whom government contracting is an enigma. While these entities may have proven their capabilities doing business with other private sector firms, current statutory competition requirements make it difficult for these entities to prove themselves to federal agencies without competing against experienced government contractors who are much more skilled on how to win a competition for a federal agency requirement. In some cases, the compliance requirements associated with receiving work, which can number in the dozens, create additional barriers for entities which lack the resources to simultaneously provide technical support and learn the intricacies of numerous government-unique record-keeping and reporting requirements.

This proposal would authorize a modest pilot to allow Defense and civilian agencies to test – for a small number of acquisitions – a process where consideration is limited to one or more start-up companies and companies that are established but have not done business with the government but who can provide a needed innovation. The proposal anticipates that awards would generally be made to small businesses. However, in recognition of the fact that solutions may be offered by a large entity that has not previously done business with the government, the proposal would authorize awards to entities of any size after giving special consideration to a small business concern.

Innovation set-asides would supplement, not replace, the important tools that currently exist as pathways into the federal marketplace – including subcontracting, the Small Business Innovation Research program, the Small Business Administration's 8(a) business development program for small-disadvantaged businesses, and the mentor-protégé program where small business protégés serve as prime contractors that are mentored by experienced large businesses. Nor would the pilot substitute for incentives, such as value engineering, that may be used to encourage incumbent federal contractors to work with their agencies to identify innovative measures to reduce costs and increase quality. Instead, the innovation set-aside would provide an alternative when those tools don't easily allow agencies to reach new entrants offering the types of solutions needed to meet their requirements.

Budgetary Implications: There would be no budgetary impact as a result of these legislative changes because the proposal is only an authorization and would not increase the overall budget requirements of the Department or any other federal agency.

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

Section 819 would enhance and codify in title 10, United States Code, the authorities provided in section 1514 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364, 120 Stat. 2439), as amended, to make permanent the authorities

associated with the existing Joint Improvised Explosive Device Defeat Fund (JIEDDF). This proposal would broaden that existing statutory authority, which focuses on improvised explosive devices (IEDs), to include any improvised threats as specified by the Secretary of Defense. This proposal would redesignate the JIEDDF as the Joint Improvised-Threat Defeat Fund (JIDF) for consistency with that enhanced purpose (hereinafter referred to as the "Fund"). This proposal would permit broader protection for U.S. Armed Forces against known threats such as IEDs and provide the Secretary the speed and flexibility to respond to future emerging improvised threats. These enhancements are consistent with the requirement to respond to emerging, urgent requirements of the commanders of combatant commands (CCMDs). Codification of this authority allows for seamless transition of the legacy wartime requirement to counter-IEDs to an enduring function focused broadly on improvised threats to meet the requirements for all CCMDs.

This proposal would also codify and enhance the existing statutory "precursor material" interdiction authority which has authorized limited expenditure from the Fund for training, equipment, supplies, and services to ministries and other entities of the Government of Pakistan to interdict the flow of precursor IED materials into Afghanistan. This proposal would apply that authority (along with the associated transfer authority to other United States agencies) to ministries and other governmental entities of any country that the Secretary of Defense, with the concurrence of the Secretary of State, identifies as critical for countering the movement of precursor materials for IEDs. This enhancement addresses the global, network-focused methodology of violent extremist organizations who use improvised weapons for strategic influence.

This proposal would also codify and enhance the existing statutory authority which makes the Fund available for building partner capacity under authority provided the Department under any other provision of law. The Fund will only be executed through other existing Department authorities. Execution will be done according to the processes and procedures established for those existing authorities. State Department oversight will be through the mechanisms currently in place for those authorities such as Secretary of State concurrence, or by other established means. The Fund would be made available to be used to provide assistance to foreign security forces in the form of training, basic equipment, and services in locations in which the Department is conducting overseas contingency operations or geographic areas in which the Secretary of Defense has determined that a foreign security force is facing a significant threat from improvised explosive devices. This enhancement permits the use of the Fund to counter improvised threats more rapidly in theaters where the presence of U.S. forces may be restricted or limited, but where the improvised threat still poses a strategic effect to U.S. interests and allies. Until enactment of the FY2016 NDAA authority did not exist to use the Fund for program elements that may involve economic, judicial, and other expenses that would be considered as foreign assistance. This enhancement would permit limited use of the Fund to provide training, basic equipment, and services to foreign security forces to defeat improvised explosive devices by leveraging existing Department authorities permitting the training and equipping of foreign security forces.

Budget Implications: The resources reflected in the table below are funded within the FY 2017 President's Budget.

RESOURCE REQUIREMENTS ($MILLIONS)								
FY	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Amount		113.3	113.1	114.3	116.7	Joint Improvised-Threat Defeat Fund		
	408.3					Joint Improvised-Threat Defeat Fund, OCO		

Changes to Existing Law: This proposal would make the following changes to existing law:

1. The proposal would add a new section 2283 to title 10, United States Code, which is set out in full above.

2. The proposal would repeal section 1514 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2439), as amended, as follows:

~~**SEC. 1514. JOINT IMPROVISED EXPLOSIVE DEVICE DEFEAT FUND.**~~

~~(a) AUTHORIZATION OF APPROPRIATION.—Funds are hereby authorized for fiscal year 2007 for the Joint Improvised Explosive Device Defeat Fund in the amount of $2,100,000,000.~~

~~(b) USE OF FUNDS.—Funds appropriated pursuant to subsection (a) shall be available to the Secretary of Defense for the purpose of allowing the Director of the Joint Improvised Explosive Device Defeat Organization to investigate, develop, and provide equipment, supplies, services, training, facilities, personnel, and funds to assist United States forces in the defeat of improvised explosive devices.~~

~~(c) TRANSFER AUTHORITY.—~~

~~(1) TRANSFERS AUTHORIZED.—Amounts authorized to be appropriated by subsection (a) may be transferred from the Joint Improvised Explosive Device Defeat Fund to any of the following accounts and funds of the Department of Defense to accomplish the purposes provided in subsection (b):~~

~~(A) Operation and maintenance accounts.~~

~~(B) Procurement accounts.~~

~~(C) Research, development, test, and evaluation accounts.~~

~~(D) Defense working capital funds.~~

~~(2) ADDITIONAL TRANSFER AUTHORITY.—The transfer authority provided by paragraph (1) is in addition to any other transfer authority available to the Department of Defense.~~

~~(3) TRANSFERS BACK TO THE FUND.—Upon determination that all or part of the funds transferred from the Joint Improvised Explosive Device Defeat Fund under paragraph (1) are not necessary for the purpose provided, such funds may be transferred back to the Joint Improvised Explosive Device Defeat Fund.~~

~~(4) [Repealed]~~

~~(5) EFFECT ON AUTHORIZATION AMOUNTS.—A transfer of an amount to an account under the authority in paragraph (1) shall be deemed to increase the amount authorized for such account by an amount equal to the amount transferred.~~

~~(d) MANAGEMENT PLAN.—~~

~~(1) PLAN REQUIRED.—Not later than 60 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees a plan for the intended management and use of the Joint Improvised Explosive Device Defeat Fund.~~

~~(2) MATTER TO BE INCLUDED.—The plan required by paragraph e the paragraph under the heading ''Joint Improvised Explosive Device Defeat Fund'' in chapter 2 of title I of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109–234; 120 Stat. 424), including identification of—~~

~~(A) year-to-date transfers and obligations; and~~

~~(B) projected transfers and obligations through September 30, 2007.~~

~~(e) QUARTERLY REPORTS.—Not later than 60 days after the end of each fiscal-year quarter, the Secretary shall submit to the congressional defense committees a report summarizing the detail of any obligation or transfer of funds from the Joint Improvised Explosive Device Defeat Fund plan required by subsection (d).~~

~~(f) DURATION OF AUTHORITY.—Amounts appropriated to the Fund are available for obligation or transfer from the Fund until September 30, 2009.~~

3. The proposal would also repeal section 1533 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 129 Stat.1092) as follows:

~~SEC. 1533. AVAILABILITY OF JOINT IMPROVISED EXPLOSIVE DEVICE DEFEAT FUND FOR TRAINING OF FOREIGN SECURITY FORCES TO DEFEAT IMPROVISED EXPLOSIVE DEVICES.~~

~~(a) AVAILABILITY OF FUNDS.—~~

~~(1) IN GENERAL.—Of the amounts authorized to be appropriated for fiscal year 2016 for the Joint Improvised Explosive Device Defeat Fund, or a successor fund, up to $30,000,000 may be available to the Secretary of Defense to provide training to foreign security forces to defeat improvised explosive devices under authority provided the Department of Defense under any other provision of law.~~

~~(2) APPLICABILITY OF CONTINGENT LIMITATION.—The availability of funds under this subsection is subject to the contingent limitation on the availability of~~

~~amounts in the Joint Improvised Explosive Device Defeat Fund after September 30, 2016, in section 1532(g).~~

~~(b) CONSTRUCTION OF AVAILABILITY OF FUNDS.—The availability of funds under subsection (a) shall not be construed as authority in and of itself for the provision of training as described in that subsection.~~

~~(c) GEOGRAPHIC LIMITATION.—Training may be provided using funds available under subsection (a) only—~~

~~(1) in locations in which the Department is conducting a named operation; or~~

~~(2) in geographic areas in which the Secretary of Defense has determined that a foreign security force is facing a significant threat from improvised explosive devices.~~

~~(d) COORDINATION WITH GEOGRAPHIC COMBATANT COMMANDS.—The Secretary of Defense shall, to the extent practicable, coordinate the provision of training using funds available under subsection (a) with requests received from the commanders of the geographic combatant commands.~~

~~(e) EXPIRATION.—The authority to use funds described in subsection (a) in accordance with this section shall expire on September 30, 2018.~~

Section 820 would repeal subsections (a) and (d) of section 893 of the Fiscal Year (FY) 2016 National Defense Authorization Act (NDAA) (Public Law 114-92) to allow the Defense Contract Audit Agency (DCAA) the ability to perform audits for non-Defense Agencies without a reduction in the appropriated funding for the Agency.

The current language will not meet the intent of the law which is to reduce DCAA's incurred cost backlog. The implementation of subsections (a)(1) and (a)(2) is having a significant negative impact on DCAA's efforts in eliminating its incurred cost backlog, the Department of Defense (DoD) Contract Closeout Initiatives, and industry. As a result of the law, DCAA was forced to implement a hiring freeze and expects to reduce its workforce by approximately 400 employees due to the reimbursable funding that DCAA no longer receives from non-Defense Agencies (approximately $50 million).This reduction in workforce will increase the time it will take for DCAA to eliminate the incurred cost backlog by a year. The law will also cause contractors servicing multiple Government Agencies to be subjected to duplicative audits from each Agency because DCAA is no longer able to audit direct costs of non-Defense agencies.

DoD is the Cognizant Federal Agency at many DoD contractors where non-Defense Agencies also have contracts, and DCAA is the responsible Government audit agency. Therefore, DCAA is still required to perform audits at these companies that have both DoD and non-Defense Agency work, but will have to do so with fewer resources because the non-Defense Agencies will not be funding their portion of the work. The Federal Acquisition Regulations require agencies to avoid duplicative audits. However, under the provisions of section 893, the non-Defense agencies will have to pay Independent Public Accountants to perform separate audits on the direct costs for their contracts, thus resulting in inefficiencies for industry having to support multiple groups of auditors, and increasing the costs to the Government for paying the outside auditors. By not permitting DCAA to audit the costs incurred on non-Defense contracts, section 893, subsections (a)(1) and (a)(2), introduced inefficiencies into the acquisition process that would not exist if DCAA were permitted to perform a single audit.

The intent of these subsections was for DCAA to continue to reduce the DoD incurred cost backlog. However, the effect of these subsections will actually result in a slower reduction of the DoD backlog due to the loss of resources that were performing work that supported both DoD and non-Defense Agencies. Barring unforeseen circumstances, DCAA anticipated its incurred cost backlog would be eliminated by the end of FY 2017 as it has made significant strides in reducing the incurred cost backlog over the past several year (over 21,000 years in 2011 to just over 7,000 years now). With the loss of resources due to the lack of reimbursable funding, we are now anticipating the backlog will remain until the end of FY 2018. DCAA anticipates the reduction in workforce will result in 300 fewer incurred cost audits for DoD being performed during FY 2016. The outcome is the opposite of the intent; therefore, we recommend rescinding these two sections and allowing DCAA to perform work for our reimbursable customers.

Budget Implications: This proposal has several budget implications. If not enacted, the proposal will result in cost increases for non-DoD agencies due to the need to contract with more costly independent public accounting firms. In addition, the inefficiencies of having several auditors will slow down the progress for reducing the incurred cost backlog resulting in increased costs to the Government as a whole. The table below details resource requirements associated with this proposal. The resources reflected in the table below are best estimates of the implications to non-DoD agencies budgets.

INCREASE IN RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	$6.16	$6.26	$6.36	$6.47	$6.60	National Aeronautics and Space Administration			
	$5.08	$5.16	$5.24	$5.33	$5.44	Department of Energy			
	$2.41	$2.45	$2.49	$2.53	$2.59	USAID			
	$2.27	$2.31	$2.35	$2.39	$2.44	Department of State			
	$1.63	$1.66	$1.69	$1.72	$1.75	Health and Human Services			
	$2.45	$2.48	$2.52	$2.57	$2.61	Others			
Total	$20.00	$20.32	$20.65	$21.01	$21.43				

If the proposal is not enacted, the non-DoD agencies will be required to contract with Independent Public Accountants (IPAs) to perform the work in lieu of DCAA. We estimate this will cost the non-DoD agencies as much as $20 million more than if DCAA was to perform the work. This does not include an estimate for the inefficiencies by having more than one audit team to perform the complete contract audit.

Additionally, if this proposal is not enacted the Government will continue to experience audit inefficiencies resulting in a slower progress in eliminating the incurred cost backlog and increased costs to the Government. The larger the incurred cost backlog the more costly it is to the Government and Industry. The current NDAA language has a negative impact in accomplishing the backlog. We anticipate it will delay eliminating the backlog by at least a year.

Changes to Existing Law: This proposal would amend section 893 of the National Defense Authorization Act for Fiscal Year 2016, as follows (text to be deleted is ~~struck through~~):

SEC. 893. IMPROVED AUDITING OF CONTRACTS.

~~(a) PROHIBITION ON PERFORMANCE OF NON-DEFENSE AUDITS BY DCAA.—~~

~~(1) IN GENERAL.— Effective on the date of the enactment of this Act, the Defense Contract Audit Agency may not provide audit support for non-Defense Agencies unless the Secretary of Defense certifies that the backlog for incurred cost audits is less than 18 months of incurred cost inventory.~~

~~(2) ADJUSTMENT IN FUNDING FOR REIMBURSEMENTS FROM NON-DEFENSE AGENCIES.— The amount appropriated and otherwise available to the Defense Contract Audit Agency for a fiscal year beginning after September 30, 2016, shall be reduced by an amount equivalent to any reimbursements received by the Agency from non-Defense Agencies for audit support provided.~~

(b) AMENDMENTS TO DEFENSE CONTRACT AUDIT AGENCY ANNUAL REPORT.—Section 2313a(a) of title 10, United States Code, is amended—

(1) in paragraph (2), by amending subparagraph (D) to read as follows:

"(D) the total costs of sustained or recovered costs both as a total number and as a percentage of questioned costs; and";

(2) in paragraph (3), by striking "; and" and inserting a semicolon;

(3) by redesignating paragraph (4) as paragraph (5); and

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

"(4) a description of outreach actions toward industry to promote more effective use of audit resources; and".

(c) REVIEW OF ACQUISITION OVERSIGHT AND AUDITS.—

(1) REVIEW REQUIRED.—The Secretary of Defense shall review the oversight and audit structure of the Department of Defense with the goals of—

(A) enhancing the productivity of oversight and program and contract auditing to avoid duplicative audits; and

(B) streamlining of oversight reviews.

(2) RECOMMENDATIONS.—The Secretary shall ensure streamlined oversight reviews and avoidance of duplicative audits and make recommendations in the report required under paragraph (3) for any necessary changes in law.

(3) REPORT.—

(A) Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a

report on actions taken to avoid duplicative audits and streamline oversight reviews.

(B) The report required under this paragraph shall include the following elements:

(i) A description of actions taken to avoid duplicative audits and streamline oversight reviews based on the review conducted under paragraph (1).

(ii) A comparison of commercial industry accounting practices, including requirements under the Sarbanes-Oxley Act of 2002 (Public Law 107-204; 15 U.S.C. 7201 et seq.), with the cost accounting standards prescribed under chapter 15 of title 41, United States Code, to determine if some portions of cost accounting standards compliance can be met through such practices or requirements.

(iii) A description of standards of materiality used by the Defense Contract Audit Agency and the Inspector General of the Department of Defense for defense contract audits.

(iv) An estimate of average delay and range of delays in contract awards due to the time necessary for the Defense Contract Audit Agency to complete pre-award audits.

(v) The total costs of sustained or recovered costs both as a total number and as a percentage of questioned costs.

~~(d) INCURRED COST INVENTORY DEFINED.—In this section, the term "incurred cost inventory" means the level of contractor incurred cost proposals in inventory from prior fiscal years that are currently being audited by the Defense Contract Audit Agency.~~

Section 821 would permit the Department of Defense (DoD) to provide DoD contractors performing under a DoD Federally Funded Research and Development Center (FFRDC) contract with access to sensitive information necessary to carry out their functions. The proposal would add a new section 129e to title 10 U.S. Code, modeled on the pattern of section 129d of title 10 - DISCLOSURE TO LITIGATION SUPPORT CONTRACTORS

The purpose of this proposal is to enable DoD to more efficiently and effectively give DoD contractors performing efforts or research on behalf of the Department under a DoD FFRDC contract access to confidential commercial, financial, or proprietary information, technical data, or other privileged information owned by other defense contractors that is needed to perform mission critical work. The Federal Acquisition Regulation (FAR) Part 35 recognizes that a DoD contractor performing under a FFRDC contract, in order to discharge responsibilities to the sponsoring agency, must often have access, beyond which is common to the normal contractual relationship, to Government and supplier data, including sensitive and proprietary data.

DoD contractors performing work under FFRDC contracts awarded by the Department of Defense are considered "trusted agents" and have the highly valued ability to provide the Department with cutting edge and objective expert advice. FFRDCs contracts provide the

Government special long-term research and development assistance that cannot be met by existing in-house or other contractor resources. A DoD contractor performing work under DoD FFRDC contracts is required to conduct business with the Government sponsor consistent with this special relationship, to operate in the public interest with objectivity, and to be free from organizational conflicts of interest. The FAR makes clear that it is not the Government's intent for DoD contractors performing work under an FFRDC contract to use their privileged status or access to information to compete with the private sector. In fact, DoD contractors performing work under DoD FFRDC contracts are only allowed to perform work for other than the sponsoring agency when the work is not otherwise available from the private sector.

Section 129e, as proposed to be added by the proposal, would allow DoD contractors performing work under FFRDC contracts, upon agreement to protect such data, to access sensitive information necessary to carry out their functions of providing long-term engineering, research, development, or other analytical needs that cannot be meet as effectively by internal government or other private sector sources to DoD organizations. Section 129e would also make clear that DoD contractors performing work under DoD FFRDC contracts are barred from using the information to gain potential competitive advantage over other contractors.

Budget Implications: There are no resource requirements associated with this proposal. The Department's agreements with FFRDCs are expected to be executed with greater efficiency and success; however, the budgeted amounts for these FFRDC contracts will not change.

Changes to Existing Law: This proposal would add a new section to title 10, United States Code, shown in full in the legislative text above.

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

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CHAPTER 146—CONTRACTING FOR PERFORMANCE OF CIVILIAN COMMERCIAL OR INDUSTRIAL TYPE FUNCTIONS AMENDMENTS

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§ 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>.

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CHAPTER 147—COMMISSARIES AND EXCHANGES AND OTHER MORALE, WELFARE, AND RECREATION ACTIVITIES

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§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.

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§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. 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.

* * * * * * *

§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[4]) 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.

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,

[4] 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.

"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 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Object Class 11	2.81	2.85	2.89	2.94	3.00	Revolving Funds – Pentagon Reservation Maintenance	3	0901585D8W	0901585D8W

						Revolving Fund			
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). ***

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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	**FY**	**FY**	**FY**	**FY**	**Appropriation**	**Budget**	**Dash-1**	**Program**

	2017	2018	2019	2020	2021	From	Activity	Line Item	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.

Section 906, the Department of the Navy is currently required to maintain 10 carrier air wings (CVW). This proposal reduces the requirement to nine CVWs to allow the Navy to match the number of fully staffed CVWs to the number of operationally available aircraft carriers (CVN) per the Global Force Management Allocation Plan (GFMAP) and CVN maintenance schedules. Although the Navy will have 11 CVNs beginning in FY 2016, one CVN will be in Refueling and Complex Overhaul (44 month duration), and 1-2 CVNs are planned to be in a Docking Planned Incremental Availability (16 months) or Planned Incremental Availability (6 months). Thus, the minimum requirement for CVWs is two less than the number of CVNs, i.e. nine total CVWs. The Navy has determined that the 10th CVW is in excess of minimum requirements and is unaffordable in the current fiscally constrained environment.

Budget Implications: The table below details resource requirements and proposed offsets associated with this proposal. This initiative generates $926.1 million in savings across the President's Budget 2017 Future Years Defense Program.

Resultant savings by elimination of the tenth Air Wing

RESOURCE REQUIREMENTS ($ MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	56.5	59.6	73.9	75.4	41.9	Operation and Maintenance, Navy	01	1A1A	MULTI
	23.0	28.2	28.9	29.7	30.9	Operation and Maintenance, Navy	01	1A2A	MULTI
	6.0	1.4	3.8	6.6	0.6	Operation and Maintenance, Navy	01	1A5A	0702207N
	46.5	94.1	96.2	98.5	101.1	Military Personnel, Navy	01/02	0210	0000000N
	2.3	4.9	5.2	5.5	5.8	Medicare-Eligible Retirement Health Fund Contribution, Navy	01/02	1000N	0807732N
Total	134.3	188.1	208.0	215.7	180.3				

Changes to Existing Law: This proposal (1) would add a new subsection (c) to 10 U.S.C. 5062, shown in full above, and (2) would repeal section 1093 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 10 U.S.C. 5062 note), as follows:

~~**SEC. 1093. NUMBER OF NAVY CARRIER AIR WINGS AND CARRIER AIR WING HEADQUARTERS.**~~

~~The Secretary of the Navy shall ensure that the Navy maintains—~~

~~(1) a minimum of 10 carrier air wings; and~~

~~(2) for each such carrier air wing, a dedicated and fully staffed headquarters.~~

Section 907 would provide hiring authority under title 10, United States Code, for the Joint Special Operations University (JSOU) so as to provide JSOU the flexibility to hire select talent that is not always readily accessible via the traditional hiring process under title 5, United States Code. Title 10 hiring authority would ensure JSOU's faculty remain relevant in their area of expertise by enabling JSOU to hire faculty with relevant expertise in an expeditious manner and if necessary, replace faculty that do not maintain currency in their area of expertise.

The Joint Special Operations University is a joint academic institution that serves as the education center of the United States Special Operations Command (USSOCOM) in a role comparable to that of a Geographic Combatant Command-aligned regional center. It is a "corporate style" institution of higher learning, providing special operations-specific operational- and strategic-level education to special operations forces (SOF) and conventional forces personnel who partner with or enable SOF. JSOU supports both United States and international SOF, works with the Department of Defense (DoD) Professional Military Education (PME) system to develop and instruct SOF topics at other institutions, conducts war college-level classes, and authentically portrays SOF in numerous end-of-course "Capstone" wargames. In addition, JSOU conducts a formally recognized Joint SOF Senior Enlisted Academy on par with military service programs that is the only joint Noncommissioned Officer (NCO) Academy within DoD. JSOU engages in routine interaction with all Geographic Combatant Commands to support global partner engagement educational activities and adds a variety of SOF-related subject matter expertise to Service and Joint PME curricula. JSOU was founded to meet joint special operations educational requirements that have not been fulfilled within the DoD PME system or in schools operated by USSOCOM components.

In order to fulfill the future education role of JSOU, DoD requires the same flexibility in hiring JSOU faculty that it has in hiring faculty for the Western Hemisphere Institute for Security Cooperation, the National Defense University, and the Defense Language Institutes. The key to ensuring JSOU's academic success is relevancy to all current pillars of national security strategy with a strong focus on the future global environment in which SOF will play a profound role. Such faculty members must have the requisite specialized education and academic experience equivalent to our national civilian colleges and universities. Due to its structure, the traditional civil service system does not normally provide JSOU the best qualified instructors in a timely manner. Special title 10 authority to hire and appropriately compensate the best qualified faculty for JSOU will better support JSOU in its mission to ensure that SOF personnel are the most highly educated and effective warrior diplomats that DoD has to offer in support of our Nation's

defense priorities. JSOU, with the assistance of USSOCOM, will formalize a program for vetting faculty and maintaining their qualification and security clearances in order to support JSOU. This will posture JSOU to fulfill Commander, USSOCOM's vision of preparing SOF for the future in an increasingly complex world where innovative and critical thinking will create strategic options for national leaders.

Budget Implications: This proposal will not increase the overall budget requirements of the Department of Defense. JSOU will utilize already programmed resources and will not exceed existing salary levels to hire the appropriate mix of highly qualified faculty to fulfill specific educational requirements. JSOU will replace part of its contractor workforce serving in faculty positions on a one-for-one basis with government employees hired under this authority. JSOU currently pays an average of $165,000 per year per person for contractor support in a faculty role. A sampling of university professor salaries from the Florida region in the needed fields of study reflect a salary median of approximately $95,000 per year which is less than JSOU currently pays for contracted faculty. The result is no net additive costs for JSOU or DoD. 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**
SOCOM	20.3	21.2	21.8	22.2	22.7	Operation and Maintenance, Defense-Wide	03	1PL2	1180487BB
Total	20.3	21.2	21.8	22.2	22.7				

Changes to Existing Law: This proposal would make the following change to section 1595 of title 10, United States Code:

§ 1595. Civilian faculty members at certain Department of Defense schools: employment and compensation

(a) AUTHORITY OF SECRETARY.—The Secretary of Defense may employ as many civilians as professors, instructors, and lecturers at the institutions specified in subsection (c) as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

(c) COVERED INSTITUTIONS.—This section applies with respect to the following institutions of the Department of Defense:

(1) The National Defense University.
(2) The Foreign Language Center of the Defense Language Institute.
(3) The English Language Center of the Defense Language Institute.
(4) The Western Hemisphere Institute for Security Cooperation.

(5) The Joint Special Operations University.

(d) APPLICATION TO FACULTY MEMBERS AT NDU.—In the case of the National Defense University, this section applies with respect to persons selected by the Secretary for employment as professors, instructors, and lecturers at the National Defense University after February 27, 1990.

Section 908 would amend chapter 76 of title 10, United States Code, to provide statutory authority to implement a recent decision by the Deputy Secretary of Defense to remove from the Director of the new Defense Agency described in section 1501, which has since been named the Defense POW/MIA Accounting Agency (DPAA), responsibility for policy, control, and oversight for recovering personnel who are missing during current operations or activities. Removing the assignment of this responsibility from statute will allow the Director, DPAA, to focus the Agency's efforts and resources on accounting for personnel lost in past conflicts. Also, this proposal removes the designated Agency Director's responsibility for oversight of status determination and review boards. That responsibility will remain with the Secretary of Defense who, in the absence of a statutory assignment of the responsibility to a specific subordinate, could delegate this responsibility as the Secretary determines appropriate. Additionally, this proposal would amend chapter 76 of title 10, United States Code, to provide definitional clarity for the term "accounted for" as it relates to a person missing as described in section 1509 of that chapter.

Changes to 10 U.S.C. 1501 are necessary to implement the Deputy Secretary's decision to designate another Department of Defense organization as responsible for policy, control, and oversight for investigation and recovery related to missing persons for matters related to search, rescue, escape, and evasion. Additionally, because status determination and review boards have been used only in cases of those missing from current conflicts, the Secretary of Defense would be able to delegate this responsibility to the most appropriate Department of Defense organization.

Recovering and re-integrating our personnel who are missing or captured during current conflicts is one of the Department's essential missions. Through it, we demonstrate to DoD personnel and their families the required commitment to never leave a comrade behind. The changes requested in this proposal would ensure that resources are being applied to accounting for DoD personnel missing from past conflicts, as well as recovering DoD personnel missing during current operations in the most efficient and effective manner possible.

Finally, this proposal would amend chapter 76 of title 10, United States Code, by clearly stating that the Department is authorized to account for a missing person without having to recover and identify every fragment of remains. This would allow the Department to be more efficient and effective in accounting for missing persons and help defend the Department's equities in litigation.

Budget Implications: Two civilian personnel billets will transfer from the new Defense Agency to OSD. The resources reflected in the table below are funded within the FY 2017 President's Budget.

CIVILIAN PERSONNEL AFFECTED									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
DPAA	-2	-2	-2	-2	-2	Operation and Maintenance, Defense-Wide	04	4GTC	
OSD	+2	+2	+2	+2	+2	Operation and Maintenance, Defense-Wide	04	4GTN	

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
DPAA	- 0.2	- 0.3	-0.3	- 0.3	- 0.3	Operation and Maintenance, Defense-Wide	04	4GTC	
OSD	+0.2	+0.3	+0.3	+0.3	+0.3	Operation and Maintenance, Defense-Wide	04	4GTN	

Changes to Existing Law: This proposal would make the following changes to chapter 76 of title 10, United States Code:

CHAPTER 76—MISSING PERSONS

Sec.
1501. System for accounting for missing persons.
1501a. Public-private partnerships; other forms of support.
1502. Missing persons: initial report.
1503. Actions of Secretary concerned; initial board inquiry.
1504. Subsequent board of inquiry.
1505. Further review.
1506. Personnel files.
1507. Recommendation of status of death.
1508. Judicial review.
1509. Program to resolve missing person cases.
1510. Applicability to Coast Guard.
1511. Return alive of person declared missing or dead.
1512. Effect on State law.
1513. Definitions.

§1501. System for accounting for missing persons

(a) RESPONSIBILITY FOR MISSING PERSONS.—(1)(A) The Secretary of Defense shall designate a single organization within the Department of Defense to have responsibility for Department matters relating to missing persons **from past conflicts**, including accounting for missing persons and persons whose remains have not been recovered from the conflict in which they were lost.

(B) The organization designated under this paragraph shall be a Defense Agency or other entity of the Department of Defense outside the military departments and is referred to in this chapter as the "designated Defense Agency".

(C) The head of the organization designated under this paragraph is referred to in this chapter as the "designated Agency Director".

(2) Subject to the authority, direction, and control of the Secretary of Defense, the responsibilities of the designated Agency Director shall include the following:

(A) Policy, control, and oversight within the Department of Defense of the entire process for investigation and recovery related to missing persons, including matters related to search, rescue, escape, and evasion.

(BA) Policy, control, and oversight of the program established under section 1509 of this title.

(CB) Responsibility for accounting for missing persons **from past conflicts**, including locating, recovering, and identifying missing persons or their remains after hostilities have ceased.

(CD) Coordination for the Department of Defense with other departments and agencies of the United States on all matters concerning missing **persons from past conflicts**.

(DE) Dissemination of appropriate information on the status of missing persons **from past conflicts** to authorized family members.

(EF) Establishment of a means for communication between officials of the designated Defense Agency and family members of missing persons **from past conflicts**, veterans service organizations, concerned citizens, and the public on the Department's efforts to account for missing persons **from past conflicts**, including a readily available means for communication of their views and recommendations to the designated Agency Director.

(3) In carrying out the responsibilities established under this subsection, the designated Agency Director shall be responsible for the coordination for such purposes within the Department of Defense among the military departments, the Joint Staff, and the commanders of the combatant commands.

(4) The designated Agency Director shall establish policies, which shall apply uniformly throughout the Department of Defense, ~~for~~ **personnel recovery (including search, rescue, escape, and evasion) and** for personnel accounting (including locating, recovering, and identifying missing persons **from past conflicts** or their remains after hostilities have ceased).

(5) The designated Agency Director shall establish procedures to be followed by Department of Defense boards of inquiry, and by officials reviewing the reports of such boards, under this chapter.

(b) UNIFORM DOD PROCEDURES.—(1) The Secretary of Defense shall prescribe procedures, to apply uniformly throughout the Department of Defense, for—

(A) the determination of the status of persons described in subsection (c); and

(B) for the systematic, comprehensive, and timely collection, analysis, review, dissemination, and periodic update of information related to such persons.

(2) Such procedures may provide for the delegation by the Secretary of Defense of any responsibility of the Secretary under this chapter to the Secretary of a military department.

(3) Such procedures shall be prescribed in a single directive applicable to all elements of the Department of Defense.

(4) As part of such procedures, the Secretary may provide for the extension, on a case-by-case basis, of any time limit specified in section 1502, 1503, or 1504 of this title. Any such extension may not be for a period in excess of the period with respect to which the extension is provided. Subsequent extensions may be provided on the same basis.

(c) COVERED PERSONS.—(1) Section 1502 of this title applies in the case of any member of the armed forces on active duty—

(A) who becomes involuntarily absent as a result of a hostile action or under circumstances suggesting that the involuntary absence is a result of a hostile action; and

(B) whose status is undetermined or who is unaccounted for.

(2) Section 1502 of this title applies in the case of any other person who is a citizen of the United States and a civilian officer or employee of the Department of Defense or (subject to paragraph (3)) an employee of a contractor of the Department of Defense—

(A) who serves in direct support of, or accompanies, the armed forces in the field under orders and becomes involuntarily absent as a result of a hostile action or under circumstances suggesting that the involuntary absence is a result of a hostile action; and

(B) whose status is undetermined or who is unaccounted for.

(3) The Secretary of Defense shall determine, with regard to a pending or ongoing military operation, the specific employees, or groups of employees, of contractors of the Department of Defense to be considered to be covered by this subsection.

(d) PRIMARY NEXT OF KIN.—The individual who is primary next of kin of any person described in subsection (c) may for purposes of this chapter designate another individual to act on behalf of that individual as primary next of kin. The Secretary concerned shall treat an individual so designated as if the individual designated were the primary next of kin for purposes of this chapter. A designation under this subsection may be revoked at any time by the person who made the designation.

(e) TERMINATION OF APPLICABILITY OF PROCEDURES WHEN MISSING PERSON IS ACCOUNTED FOR.—The provisions of this chapter relating to boards of inquiry and to the actions by the Secretary concerned on the reports of those boards shall cease to apply in the case of a missing person upon the person becoming accounted for or otherwise being determined to be in a status other than missing.

(f) SECRETARY CONCERNED.—In this chapter, the term "Secretary concerned" includes, in the case of a civilian officer or employee of the Department of Defense or an employee of a contractor of the Department of Defense, the Secretary of the military department or head of the

element of the Department of Defense employing the officer or employee or contracting with the contractor, as the case may be.

§1501a. Public-private partnerships; other forms of support

(a) PUBLIC-PRIVATE PARTNERSHIPS.—The Secretary of Defense may enter into arrangements known as public-private partnerships with appropriate entities outside the Government for the purposes of facilitating the activities of the designated Defense Agency. The Secretary may only partner with foreign governments or foreign entities with the concurrence of the Secretary of State. Any such arrangement shall be entered into in accordance with authorities provided under this section or any other authority otherwise available to the Secretary. Regulations prescribed under subsection (e)(1) shall include provisions for the establishment and implementation of such partnerships.

(b) ACCEPTANCE OF VOLUNTARY PERSONAL SERVICES.—The Secretary of Defense may accept voluntary services to facilitate accounting for missing persons in the same manner as the Secretary of a military department may accept such services under section 1588(a)(9) of this title.

(c) COOPERATIVE AGREEMENTS AND GRANTS.—

(1) IN GENERAL.—The Secretary of Defense may enter into a cooperative agreement with, or make a grant to, a private entity for purposes related to support of the activities of the designated Defense Agency.

(2) INAPPLICABILITY OF CERTAIN CONTRACT REQUIREMENTS.—Notwithstanding section 2304(k) of this title, the Secretary may enter such cooperative agreements or grants on a sole-source basis pursuant to section 2304(c)(5) of this title.

(d) USE OF DEPARTMENT OF DEFENSE PERSONAL PROPERTY.—The Secretary may allow a private entity to use, at no cost, personal property of the Department of Defense to assist the entity in supporting the activities of the designated Defense Agency.

(e) REGULATIONS.—

(1) IN GENERAL.—The Secretary of Defense shall prescribe regulations to implement this section.

(2) LIMITATION.—Such regulations shall provide that acceptance of a gift (including a gift of services), or use of a gift under this section may not occur if the nature or circumstances of the acceptance or use would compromise the integrity, or the appearance of integrity, of any program of the Department of Defense or any individual involved in such program.

(f) DEFINITIONS.—In this section:

(1) COOPERATIVE AGREEMENT.—The term "cooperative agreement" means an authorized cooperative agreement as described in section 6305 of title 31.

(2) GRANT.—The term "grant" means an authorized grant as described in section 6304 of title 31.

§1502. Missing persons: initial report

(a) PRELIMINARY ASSESSMENT AND RECOMMENDATION BY COMMANDER.—After receiving information that the whereabouts and status of a person described in section 1501(c) of this title is uncertain and that the absence of the person may be involuntary, the commander of the unit, facility, or area to or in which the person is assigned shall make a preliminary assessment of the circumstances. If, as a result of that assessment, the commander concludes that the person is missing, the commander shall—

(1) recommend that the person be placed in a missing status; and

(2) not later than 10 days after receiving such information, transmit a report containing that recommendation to the Secretary concerned in accordance with procedures prescribed under section 1501(b) of this title.

(b) TRANSMISSION OF ADVISORY COPY TO THEATER COMPONENT COMMANDER.—When transmitting a report under subsection (a)(2) recommending that a person be placed in a missing status, the commander transmitting that report shall transmit an advisory copy of the report to the theater component commander with jurisdiction over the missing person.

(c) SAFEGUARDING AND FORWARDING OF RECORDS.—A commander making a preliminary assessment under subsection (a) with respect to a missing person shall (in accordance with procedures prescribed under section 1501 of this title) safeguard and forward for official use any information relating to the whereabouts and status of the missing person that results from the preliminary assessment or from actions taken to locate the person.

§1503. Actions of Secretary concerned; initial board inquiry

(a) DETERMINATION BY SECRETARY.—Upon receiving a recommendation under section 1502(a) of this title that a person be placed in a missing status, the Secretary receiving the recommendation shall review the recommendation and, not later than 10 days after receiving such recommendation, shall appoint a board under this section to conduct an inquiry into the whereabouts and status of the person.

(b) INQUIRIES INVOLVING MORE THAN ONE MISSING PERSON.—If it appears to the Secretary who appoints a board under this section that the absence or missing status of two or more persons is factually related, the Secretary may appoint a single board under this section to conduct the inquiry into the whereabouts and status of all such persons.

(c) COMPOSITION.—(1) A board appointed under this section to inquire into the whereabouts and status of a person shall consist of at least one individual described in paragraph (2) who has experience with and understanding of military operations or activities similar to the operation or activity in which the person disappeared.
(2) An individual referred to in paragraph (1) is the following:

(A) A military officer, in the case of an inquiry with respect to a member of the armed forces.

(B) A civilian, in the case of an inquiry with respect to a civilian employee of the Department of Defense or of a contractor of the Department of Defense.

(3) An individual may be appointed as a member of a board under this section only if the individual has a security clearance that affords the individual access to all information relating to the whereabouts and status of the missing persons covered by the inquiry.
(4) A Secretary appointing a board under this subsection shall, for purposes of providing legal counsel to the board, assign to the board a judge advocate, or appoint to the board an attorney, who has expertise in the law relating to missing persons, the determination of death of such persons, and the rights of family members and dependents of such persons.

(d) DUTIES OF BOARD.—A board appointed to conduct an inquiry into the whereabouts and status of a missing person under this section shall—

(1) collect, develop, and investigate all facts and evidence relating to the disappearance or whereabouts and status of the person;

(2) collect appropriate documentation of the facts and evidence covered by the board's investigation;

(3) analyze the facts and evidence, make findings based on that analysis, and draw conclusions as to the current whereabouts and status of the person; and

(4) with respect to each person covered by the inquiry, recommend to the Secretary who appointed the board that—

(A) the person be placed in a missing status; or

(B) the person be declared to have deserted, to be absent without leave, or (subject to the requirements of section 1507 of this title) to be dead.

(e) BOARD PROCEEDINGS.—During the proceedings of an inquiry under this section, a board shall—

(1) collect, record, and safeguard all facts, documents, statements, photographs, tapes, messages, maps, sketches, reports, and other information (whether classified or unclassified) relating to the whereabouts and status of each person covered by the inquiry;

(2) gather information relating to actions taken to find the person, including any evidence of the whereabouts and status of the person arising from such actions; and

(3) maintain a record of its proceedings.

(f) COUNSEL FOR MISSING PERSON.—(1) The Secretary appointing a board to conduct an inquiry under this section shall appoint counsel to represent each person covered by the inquiry or, in a case covered by subsection (b), one counsel to represent all persons covered by the inquiry. Counsel appointed under this paragraph may be referred to as "missing person's counsel" and represents the interests of the person covered by the inquiry (and not any member of the person's family or other interested parties). The identity of counsel appointed under this paragraph for a missing person shall be made known to the missing person's primary next of kin and any other previously designated person of the person.

(2) To be appointed as a missing person's counsel, a person must—

(A) have the qualifications specified in section 827(b) of this title (article 27(b) of the Uniform Code of Military Justice) for trial counsel or defense counsel detailed for a general court-martial;

(B) have a security clearance that affords the counsel access to all information relating to the whereabouts and status of the person or persons covered by the inquiry; and

(C) have expertise in the law relating to missing persons, the determination of the death of such persons, and the rights of family members and dependents of such persons.

(3) A missing person's counsel—

(A) shall have access to all facts and evidence considered by the board during the proceedings under the inquiry for which the counsel is appointed;

(B) shall observe all official activities of the board during such proceedings;

(C) may question witnesses before the board; and

(D) shall monitor the deliberations of the board.

(4) A missing person's counsel shall assist the board in ensuring that all appropriate information concerning the case is collected, logged, filed, and safeguarded. The primary next of kin of a missing person and any other previously designated person of the missing person shall have the right to submit information to the missing person's counsel relative to the disappearance or status of the missing person.

(5) A missing person's counsel shall review the report of the board under subsection (h) and submit to the Secretary concerned who appointed the board an independent review of that report. That review shall be made an official part of the record of the board.

(g) ACCESS TO PROCEEDINGS.—The proceedings of a board during an inquiry under this section shall be closed to the public (including, with respect to the person covered by the inquiry, the primary next of kin, other members of the immediate family, and any other previously designated person of the person).

(h) REPORT.—(1) A board appointed under this section shall submit to the Secretary who appointed the board a report on the inquiry carried out by the board. The report shall include—

(A) a discussion of the facts and evidence considered by the board in the inquiry;

(B) the recommendation of the board under subsection (d) with respect to each person covered by the report; and

(C) disclosure of whether classified documents and information were reviewed by the board or were otherwise used by the board in forming recommendations under subparagraph (B).

(2) A board shall submit a report under this subsection with respect to the inquiry carried out by the board not later than 30 days after the date of the appointment of the board to carry out the inquiry. The report may include a classified annex.

(3) The Secretary of Defense shall prescribe procedures for the release of a report submitted under this subsection with respect to a missing person. Such procedures shall provide that the report may not be made public (except as provided for in subsection (j)) until one year after the date on which the report is submitted.

(i) DETERMINATION BY SECRETARY.—(1) Not later than 30 days after receiving a report from a board under subsection (h), the Secretary receiving the report shall review the report.

(2) In reviewing a report under paragraph (1), the Secretary shall determine whether or not the report is complete and free of administrative error. If the Secretary determines that the

report is incomplete, or that the report is not free of administrative error, the Secretary may return the report to the board for further action on the report by the board.

(3) Upon a determination by the Secretary that a report reviewed under this subsection is complete and free of administrative error, the Secretary shall make a determination concerning the status of each person covered by the report, including whether the person shall—

(A) be declared to be missing;

(B) be declared to have deserted;

(C) be declared to be absent without leave; or

(D) be declared to be dead.

(j) REPORT TO FAMILY MEMBERS AND OTHER INTERESTED PERSONS.—Not later than 30 days after the date on which the Secretary concerned makes a determination of the status of a person under subsection (i), the Secretary shall take reasonable actions to—

(1) provide to the primary next of kin, the other members of the immediate family, and any other previously designated person of the person—

(A) an unclassified summary of the unit commander's report with respect to the person under section 1502(a) of this title; and

(B) the report of the board (including the names of the members of the board) under subsection (h); and

(2) inform each individual referred to in paragraph (1) that the United States will conduct a subsequent inquiry into the whereabouts and status of the person on or about one year after the date of the first official notice of the disappearance of the person, unless information becomes available sooner that may result in a change in status of the person.

(k) TREATMENT OF DETERMINATION.—Any determination of the status of a missing person under subsection (i) shall be treated as the determination of the status of the person by all departments and agencies of the United States.

§1504. Subsequent board of inquiry

(a) ADDITIONAL BOARD.—If information that may result in a change of status of a person covered by a determination under section 1503(i) of this title becomes available within one year after the date of the transmission of a report with respect to the person under section 1502(a)(2) of this title, the Secretary concerned shall appoint a board under this section to conduct an inquiry into the information.

(b) DATE OF APPOINTMENT.—The Secretary concerned shall appoint a board under this section to conduct an inquiry into the whereabouts and status of a missing person on or about one year after the date of the transmission of a report concerning the person under section 1502(a)(2) of this title.

(c) COMBINED INQUIRIES.—If it appears to the Secretary concerned that the absence or status of two or more persons is factually related, the Secretary may appoint one board under this section to conduct the inquiry into the whereabouts and status of such persons.

(d) COMPOSITION.—(1) A board appointed under this section shall be composed of at least three members as follows:

(A) In the case of a board that will inquire into the whereabouts and status of one or more members of the armed forces (and no civilians described in subparagraph (B)), the board shall be composed of officers having the grade of major or lieutenant commander or above.

(B) In the case of a board that will inquire into the whereabouts and status of one or more civilian employees of the Department of Defense or contractors of the Department of Defense (and no members of the armed forces), the board shall be composed of—

(i) not less than three employees of the Department of Defense whose rate of annual pay is equal to or greater than the rate of annual pay payable for grade GS–13 of the General Schedule under section 5332 of title 5; and

(ii) such members of the armed forces as the Secretary considers advisable.

(C) In the case of a board that will inquire into the whereabouts and status of both one or more members of the armed forces and one or more civilians described in subparagraph (B)—

(i) the board shall include at least one officer described in subparagraph (A) and at least one employee of the Department of Defense described in subparagraph (B)(i); and

(ii) the ratio of such officers to such employees on the board shall be roughly proportional to the ratio of the number of members of the armed forces who are subjects of the board's inquiry to the number of civilians who are subjects of the board's inquiry.

(2) The Secretary concerned shall designate one member of a board appointed under this section as president of the board. The president of the board shall have a security clearance that affords the president access to all information relating to the whereabouts and status of each person covered by the inquiry.

(3) One member of each board appointed under this subsection shall be an individual who—

(A) has an occupational specialty similar to that of one or more of the persons covered by the inquiry; and

(B) has an understanding of and expertise in the type of official activities that one or more such persons were engaged in at the time such person or persons disappeared.

(4) The Secretary who appoints a board under this subsection shall, for purposes of providing legal counsel to the board, assign to the board a judge advocate, or appoint to the board an attorney, with the same qualifications as specified in section 1503(c)(4) of this title.

(e) DUTIES OF BOARD.—A board appointed under this section to conduct an inquiry into the whereabouts and status of a person shall—

(1) review the reports with respect to the person transmitted under section 1502(a)(2) of this title and submitted under section 1503(h) of this title;

(2) collect and evaluate any document, fact, or other evidence with respect to the whereabouts and status of the person that has become available since the determination of the status of the person under section 1503 of this title;

(3) draw conclusions as to the whereabouts and status of the person;

(4) determine on the basis of the activities under paragraphs (1) and (2) whether the status of the person should be continued or changed; and

(5) submit to the Secretary concerned a report describing the findings and conclusions of the board, together with a recommendation for a determination by the Secretary concerning the whereabouts and status of the person.

(f) COUNSEL FOR MISSING PERSONS.—(1) When the Secretary concerned appoints a board to conduct an inquiry under this section, the Secretary shall appoint counsel to represent each person covered by the inquiry. The identity of counsel appointed under this paragraph for a missing person shall be made known to the missing person's primary next of kin and any other previously designated person of the person.

(2) A person appointed as counsel under this subsection shall meet the qualifications and have the duties set forth in section 1503(f) of this title for a missing person's counsel appointed under that section.

(3) The review of the report of a board on an inquiry that is submitted by such counsel shall be made an official part of the record of the board with respect to the inquiry.

(g) ATTENDANCE OF FAMILY MEMBERS AND CERTAIN OTHER INTERESTED PERSONS AT PROCEEDINGS.—(1) With respect to any person covered by an inquiry under this section, the primary next of kin, other members of the immediate family, and any other previously designated person of the person may attend the proceedings of the board during the inquiry.

(2) The Secretary concerned shall take reasonable actions to notify each individual referred to in paragraph (1) of the opportunity to attend the proceedings of a board. Such notice shall be provided not less than 60 days before the first meeting of the board.

(3) An individual who receives notice under paragraph (2) shall notify the Secretary of the intent, if any, of that individual to attend the proceedings of the board not later than 21 days after the date on which the individual receives the notice.

(4) Each individual who notifies the Secretary under paragraph (3) of the individual's intent to attend the proceedings of the board—

(A) in the case of an individual who is the primary next of kin or the previously designated person, may attend the proceedings of the board with private counsel;

(B) shall have access to the personnel file of the missing person, to unclassified reports, if any, of the board appointed under section 1503 of this title to conduct the inquiry into the whereabouts and status of the person, and to any other unclassified information or documents relating to the whereabouts and status of the person;

(C) shall be afforded the opportunity to present information at the proceedings of the board that such individual considers to be relevant to those proceedings; and

(D) subject to paragraph (5), shall be given the opportunity to submit in writing an objection to any recommendation of the board under subsection (i) as to the status of the missing person.

(5)(A) Individuals who wish to file objections under paragraph (4)(D) to any recommendation of the board shall—

(i) submit a letter of intent to the president of the board not later than 15 days after the date on which the recommendations are made; and

(ii) submit to the president of the board the objections in writing not later than 30 days after the date on which the recommendations are made.

(B) The president of a board shall include any objections to a recommendation of the board that are submitted to the president of the board under subparagraph (A) in the report of the board containing the recommendation under subsection (i).

(6) An individual referred to in paragraph (1) who attends the proceedings of a board under this subsection shall not be entitled to reimbursement by the United States for any costs (including travel, lodging, meals, local transportation, legal fees, transcription costs, witness expenses, and other expenses) incurred by that individual in attending such proceedings.

(h) AVAILABILITY OF INFORMATION TO BOARDS.—(1) In conducting proceedings in an inquiry under this section, a board may secure directly from any department or agency of the United States any information that the board considers necessary in order to conduct the proceedings.

(2) Upon written request from the president of a board, the head of a department or agency of the United States shall release information covered by the request to the board. In releasing such information, the head of the department or agency shall—

(A) declassify to an appropriate degree classified information; or

(B) release the information in a manner not requiring the removal of markings indicating the classified nature of the information.

(3)(A) If a request for information under paragraph (2) covers classified information that cannot be declassified, or if the classification markings cannot be removed before release from the information covered by the request, or if the material cannot be summarized in a manner that prevents the release of classified information, the classified information shall be made available only to the president of the board making the request and the counsel for the missing person appointed under subsection (f).

(B) The president of a board shall close to persons who do not have appropriate security clearances the proceeding of the board at which classified information is discussed. Participants at a proceeding of a board at which classified information is discussed shall comply with all applicable laws and regulations relating to the disclosure of classified information. The Secretary concerned shall assist the president of a board in ensuring that classified information is not compromised through board proceedings.

(i) RECOMMENDATION ON STATUS.—(1) Upon completion of an inquiry under this section, a board shall make a recommendation as to the current whereabouts and status of each missing person covered by the inquiry.

(2) A board may not recommend under paragraph (1) that a person be declared dead unless in making the recommendation the board complies with section 1507 of this title.

(j) REPORT.—A board appointed under this section shall submit to the Secretary concerned a report on the inquiry carried out by the board, together with the evidence considered by the board during the inquiry. The report may include a classified annex.

(k) ACTIONS BY SECRETARY CONCERNED.—(1) Not later than 30 days after the receipt of a report from a board under subsection (j), the Secretary shall review—

(A) the report;

(B) the review of the report submitted to the Secretary under subsection (f)(3) by the counsel for each person covered by the report; and

(C) the objections, if any, to the report submitted to the president of the board under subsection (g)(5).

(2) In reviewing a report under paragraph (1) (including the objections described in subparagraph (C) of that paragraph), the Secretary concerned shall determine whether or not the report is complete and free of administrative error. If the Secretary determines that the report is incomplete, or that the report is not free of administrative error, the Secretary may return the report to the board for further action on the report by the board.

(3) Upon a determination by the Secretary that a report reviewed under this subsection is complete and free of administrative error, the Secretary shall make a determination concerning the status of each person covered by the report.

(l) REPORT TO FAMILY MEMBERS AND OTHER INTERESTED PERSONS.—Not later than 60 days after the date on which the Secretary concerned makes a determination with respect to a missing person under subsection (k), the Secretary shall—

(1) provide the report reviewed by the Secretary in making the determination to the primary next of kin, the other members of the immediate family, and any other previously designated person of the person; and

(2) in the case of a person who continues to be in a missing status, inform each individual referred to in paragraph (1) that the United States will conduct a further investigation into the whereabouts and status of the person as specified in section 1505 of this title.

(m) TREATMENT OF DETERMINATION.—Any determination of the status of a missing person under subsection (k) shall supersede the determination of the status of the person under section 1503 of this title and shall be treated as the determination of the status of the person by all departments and agencies of the United States.

§1505. Further review

(a) SUBSEQUENT REVIEW.—The Secretary concerned shall conduct subsequent inquiries into the whereabouts and status of any person determined by the Secretary under section 1504 of this title to be in a missing status.

(b) FREQUENCY OF SUBSEQUENT REVIEWS.—The Secretary concerned shall conduct inquiries into the whereabouts and status of a person under subsection (a) upon receipt of information that may result in a change of status of the person. The Secretary concerned shall appoint a board to conduct such inquiries.

(c) ACTION UPON DISCOVERY OR RECEIPT OF INFORMATION.—(1) Whenever any United States intelligence agency or other element of the Government finds or receives information that may be related to a missing person, the information shall promptly be forwarded to the ~~**designated Agency Director**~~ **Secretary of Defense**.

(2) Upon receipt of information under paragraph (1), the ~~designated Agency Director~~ **Secretary of Defense** shall as expeditiously as possible ensure that the information is added to the appropriate case file for that missing person and notify (A) the designated missing person's counsel for that person, and (B) the primary next of kin and any previously designated person for the missing person of the existence of that information.

(3) The ~~designated Agency Director~~ **Secretary of Defense**, with the advice of the missing person's counsel notified under paragraph (2), shall determine whether the information is significant enough to require a board review under this section.

(d) CONDUCT OF PROCEEDINGS.—If it is determined that such a board should be appointed, the appointment of, and activities before, a board appointed under this section shall be governed by the provisions of section 1504 of this title with respect to a board appointed under that section.

§1506. Personnel files

(a) INFORMATION IN FILES.—Except as provided in subsections (b), (c), and (d), the Secretary concerned shall, to the maximum extent practicable, ensure that the personnel file of a missing person contains all information in the possession of the United States relating to the disappearance and whereabouts and status of the person.

(b) CLASSIFIED INFORMATION.—(1) The Secretary concerned may withhold classified information from a personnel file under this section. If the Secretary concerned withholds classified information from a personnel file, the Secretary shall ensure that the file contains the following:

(A) A notice that the withheld information exists.

(B) A notice of the date of the most recent review of the classification of the withheld information.

(2)(A) If classified information withheld under this subsection refers to one or more unnamed missing persons, the Secretary shall ensure that notice of that withheld information, and notice of the date of the most recent review of the classification of that withheld information, is made reasonably accessible to the primary next of kin, members of the immediate family, and the previously designated person of all missing persons from the conflict or period of war to which the classified information pertains.

(B) For purposes of subparagraph (A), information shall be considered to be made reasonably accessible if placed in a separate and distinct file that is available for review by persons specified in subparagraph (A) upon the request of any such person either to review the separate file or to review the personnel file of the missing person concerned.

(c) PROTECTION OF PRIVACY.—The Secretary concerned shall maintain personnel files under this section, and shall permit disclosure of or access to such files, in accordance with the provisions of section 552a of title 5 and with other applicable laws and regulations pertaining to the privacy of the persons covered by the files.

(d) PRIVILEGED INFORMATION.—(1) The Secretary concerned shall withhold from personnel files under this section, as privileged information, debriefing reports provided by missing persons returned to United States control which are obtained under a promise of confidentiality made for the purpose of ensuring the fullest possible disclosure of information.

(2) The Secretary concerned shall withhold from personnel files under this section, as privileged information, any survival, evasion, resistance, and escape debriefing report provided by a person described in section 1501(c) of this title who is returned to United States control which is obtained under a promise of confidentiality made for the purpose of ensuring the fullest possible disclosure of information.

(3) If a debriefing report contains non-derogatory information about the status and whereabouts of a missing person other than the source of the debriefing report or about unnamed missing persons, the Secretary concerned shall prepare an extract of the non-derogatory information. That extract, following a review by the source of the debriefing report, shall be placed in the personnel file of each missing person named in the debriefing report in such a manner as to protect the identity of the source providing the information. Any information contained in the extract of the debriefing report that pertains to unnamed missing persons shall be made reasonably accessible to the primary next of kin, members of the immediate family, and the previously designated person.

(4) Whenever the Secretary concerned withholds a debriefing report, or part of a debriefing report, from a personnel file under this subsection, the Secretary shall ensure that the file contains a notice that withheld information exists.

(e) AVAILABILITY OF INFORMATION.—The Secretary concerned shall, upon request, make available the contents of the personnel file of a missing person to the primary next of kin, the other members of the immediate family, or any other previously designated person of the person.

(f) NONDISCLOSURE OF CERTAIN INFORMATION.—A record of the content of a debriefing of a missing person returned to United States control during the period beginning on July 8, 1959, and ending on February 10, 1996, that was conducted by an official of the United States authorized to conduct the debriefing is privileged information and, notwithstanding sections 552 and 552a of title 5, may not be disclosed, in whole or in part, under either such section. However, this subsection does not limit the responsibility of the Secretary concerned under paragraphs (3) and (4) of subsection (d) to place extracts of non-derogatory information, or a notice of the existence of such information, in the personnel file of a missing person.

§1507. Recommendation of status of death

(a) REQUIREMENTS RELATING TO RECOMMENDATION.—A board appointed under section 1503, 1504, or 1505 of this title may not recommend that a person be declared dead unless—

(1) credible evidence exists to suggest that the person is dead;

(2) the United States possesses no credible evidence that suggests that the person is alive; and

(3) representatives of the United States—

(A) have made a complete search of the area where the person was last seen (unless, after making a good faith effort to obtain access to such area, such representatives are not granted such access); and

(B) have examined the records of the government or entity having control over the area where the person was last seen (unless, after making a good faith effort to obtain access to such records, such representatives are not granted such access).

(b) SUBMITTAL OF INFORMATION ON DEATH.—If a board appointed under section 1503, 1504, or 1505 of this title makes a recommendation that a missing person be declared dead, the board shall include in the report of the board with respect to the person under that section the following:

(1) A detailed description of the location where the death occurred.

(2) A statement of the date on which the death occurred.

(3) A description of the location of the body, if recovered.

(4) If the body has been recovered and is not identifiable through visual means, a certification by a forensic pathologist that the body recovered is that of the missing person. In determining whether to make such a certification, the forensic pathologist shall consider, as determined necessary by the Secretary of the military department concerned, additional evidence and information provided by appropriate specialists in forensic medicine or other appropriate medical sciences.

§1508. Judicial review

(a) RIGHT OF REVIEW.—A person who is the primary next of kin (or the previously designated person) of a person who is the subject of a finding described in subsection (b) may obtain judicial review in a United States district court of that finding, but only on the basis of a claim that there is information that could affect the status of the missing person's case that was not adequately considered during the administrative review process under this chapter. Any such review shall be as provided in section 706 of title 5.

(b) FINDINGS FOR WHICH JUDICIAL REVIEW MAY BE SOUGHT.—Subsection (a) applies to the following findings:

(1) A finding by a board appointed under section 1504 or 1505 of this title that a missing person is dead.

(2) A finding by a board appointed under section 1509 of this title that confirms that a missing person formerly declared dead is in fact dead.

(c) SUBSEQUENT REVIEW.—Appeals from a decision of the district court shall be taken to the appropriate United States court of appeals and to the Supreme Court as provided by law.

§1509. Program to resolve missing person cases

(a) PROGRAM REQUIRED; COVERED CONFLICTS.—The Secretary of Defense shall implement a comprehensive, coordinated, integrated, and fully resourced program to account for persons described in subparagraph (A) or (B) of section 1513(1) of this title who are unaccounted for from the following conflicts:

(1) World War II during the period beginning on December 7, 1941, and ending on December 31, 1946, including members of the armed forces who were lost during

flight operations in the Pacific theater of operations covered by section 576 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 10 U.S.C. 1501 note).

(2) The Cold War during the period beginning on September 2, 1945, and ending on August 21, 1991.

(3) The Korean War during the period beginning on June 27, 1950, and ending on January 31, 1955.

(4) The Indochina War era during the period beginning on July 8, 1959, and ending on May 15, 1975.

(5) The Persian Gulf War during the period beginning on August 2, 1990, and ending on February 28, 1991.

(6) Such other conflicts in which members of the armed forces served as the Secretary of Defense may designate.

(b) IMPLEMENTATION.—(1) The Secretary of Defense shall implement the program within the Department of Defense through the designated Agency Director.

(2) (A) The Secretary shall assign or detail to the designated Defense Agency on a full-time basis a senior medical examiner from the personnel of the Armed Forces Medical Examiner System. The primary duties of the medical examiner so assigned or detailed shall include the identification of remains in support of the function of the designated Agency Director to account for unaccounted for persons covered by subsection (a).

(B) In carrying out functions under this chapter, the medical examiner so assigned or detailed shall report to the designated Agency Director.

(C) The medical examiner so assigned or detailed shall—

(i) exercise scientific identification authority;

(ii) establish identification and laboratory policy consistent with the Armed Forces Medical Examiner System; and

(iii) advise the designated Agency Director on forensic science disciplines.

(D) Nothing in this chapter shall be interpreted as affecting the authority of the Armed Forces Medical Examiner under section 1471 of this title.

(c) TREATMENT AS MISSING PERSONS.—Each unaccounted for person covered by subsection (a) shall be considered to be a missing person for purposes of the applicability of other provisions of this chapter to the person.

(d) ESTABLISHMENT OF PERSONNEL FILES; CENTRALIZED DATABASE.—(1) The Secretary of Defense shall ensure that a personnel file is established and maintained for each person covered by subsection (a) if the Secretary—

(A) possesses any information relevant to the status of the person; or

(B) receives any new information regarding the missing person as provided in subsection (e).

(2) The Secretary of Defense shall ensure that each file established under this subsection contains all relevant information pertaining to a person covered by subsection (a) and is readily accessible to all elements of the department, the combatant commands, and the armed forces involved in the effort to account for the person.

(3) Each file established under this subsection shall be handled in accordance with, and subject to the provisions of, section 1506 of this title in the same manner as applies to the file of a missing person otherwise subject to such section.

(4) The Secretary of Defense shall establish and maintain a single centralized database and case management system containing information on all missing persons for whom a file has been established under this subsection. The database and case management system shall be accessible to all elements of the Department of Defense involved in the search, recovery, identification, and communications phases of the program established by this section.

(e) REVIEW OF STATUS REQUIREMENTS.—(1) If new information (as described in paragraph (3)) is found or received that may be related to one or more unaccounted for persons covered by subsection (a), whether or not such information specifically relates (or may specifically relate) to any particular such unaccounted for person, that information shall be provided to the Secretary of Defense.

(2) Upon receipt of new information under paragraph (1), the Secretary shall ensure that—

(A) the information is treated under paragraph (2) of subsection (c) of section 1505 of this title, relating to addition of the information to the personnel file of a person and notification requirements, in the same manner as information received under paragraph (1) under such subsection; and

(B) the information is treated under paragraph (3) of subsection (c) and subsection (d) of such section, relating to a board review under such section, in the same manner as information received under paragraph (1) of such subsection (c).

(3) For purposes of this subsection, new information is information that is credible and that—

(A) is found or received after November 18, 1997, by a United States intelligence agency, by a Department of Defense agency, or by a person specified in section 1504(g) of this title; or

(B) is identified after November 18, 1997, in records of the United States as information that could be relevant to the case of one or more unaccounted for persons covered by subsection (a).

(f) COORDINATION REQUIREMENTS.—(1) In carrying out the program, the designated Agency Director shall ensure coordination with the Secretaries of the military departments, the Chairman of the Joint Chiefs of Staff, and the commanders of the combatant commands.

(2) In carrying out the program, the Secretary of Defense shall establish close coordination with the Department of State, the Central Intelligence Agency, and the National Security Council staff to enhance the ability of the Department of Defense to account for persons covered by subsection (a).

(3) In carrying out the program, the designated Agency Director shall coordinate all external communications and events associated with the program.

§1510. Applicability to Coast Guard

(a) DESIGNATED OFFICER TO HAVE RESPONSIBILITY.—The Secretary of Homeland Security shall designate an officer of the Department of Homeland Security to have responsibility within the Department of Homeland Security for matters relating to missing persons who are members of the Coast Guard.

(b) PROCEDURES.—The Secretary of Homeland Security shall prescribe procedures for the determination of the status of persons described in section 1501(c) of this title who are members of the Coast Guard and for the collection, analysis, review, and update of information on such persons. To the maximum extent practicable, the procedures prescribed under this section shall be similar to the procedures prescribed by the Secretary of Defense under section 1501(b) of this title.

§1511. Return alive of person declared missing or dead

(a) PAY AND ALLOWANCES.—Any person (except for a person subsequently determined to have been absent without leave or a deserter) in a missing status or declared dead under subchapter VII of chapter 55 of title 5 or chapter 10 of title 37 or by a board appointed under this chapter who is found alive and returned to the control of the United States shall be paid for the full time of the absence of the person while given that status or declared dead under the law and regulations relating to the pay and allowances of persons returning from a missing status.

(b) EFFECT ON GRATUITIES PAID AS A RESULT OF STATUS.—Subsection (a) shall not be interpreted to invalidate or otherwise affect the receipt by any person of a death gratuity or other payment from the United States on behalf of a person referred to in subsection (a) before February 10, 1996.

§1512. Effect on State law

(a) NONPREEMPTION OF STATE AUTHORITY.—Nothing in this chapter shall be construed to invalidate or limit the power of any State court or administrative entity, or the power of any court or administrative entity of any political subdivision thereof, to find or declare a person dead for purposes of such State or political subdivision.

(b) STATE DEFINED.—In this section, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

§1513. Definitions

In this chapter:

(1) The term “missing person” means—

(A) a member of the armed forces on active duty who is in a missing status; or

(B) a civilian employee of the Department of Defense or an employee of a contractor of the Department of Defense who serves in direct support of, or accompanies, the armed forces in the field under orders and who is in a missing status.

Such term includes an unaccounted for person described in subsection (a) of section 1509 of this title who is required by subsection (c) of such section to be considered a missing person.

(2) The term "missing status" means the status of a missing person who is determined to be absent in a category of any of the following:

(A) Missing.
(B) Missing in action.
(C) Interned in a foreign country.
(D) Captured.
(E) Beleaguered.
(F) Besieged.
(G) Detained in a foreign country against that person's will.

(3) The term "accounted for", with respect to a person in a missing status, means that—

(A) the person is returned to United States control alive;

(B) the remains of the person are recovered **to the extent practicable** and, if not identifiable through visual means as those of the missing person, are identified as those of the missing person by a practitioner of an appropriate forensic science; or

(C) credible evidence exists to support another determination of the person's status.

(4) The term "primary next of kin", in the case of a missing person, means the individual authorized to direct disposition of the remains of the person under section 1482 (c) of this title.

(5) The term "member of the immediate family", in the case of a missing person, means the following:

(A) The spouse of the person.

(B) A natural child, adopted child, stepchild, or illegitimate child (if acknowledged by the person or parenthood has been established by a court of competent jurisdiction) of the person, except that if such child has not attained the age of 18 years, the term means a surviving parent or legal guardian of such child.

(C) A biological parent of the person, unless legal custody of the person by the parent has been previously terminated by reason of a court decree or otherwise under law and not restored.

(D) A brother or sister of the person, if such brother or sister has attained the age of 18 years.

(E) Any other blood relative or adoptive relative of the person, if such relative was given sole legal custody of the person by a court decree or otherwise

under law before the person attained the age of 18 years and such custody was not subsequently terminated before that time.

(6) The term "previously designated person", in the case of a missing person, means an individual designated by the person under section 655 of this title for purposes of this chapter.

(7) The term "classified information" means any information the unauthorized disclosure of which (as determined under applicable law and regulations) could reasonably be expected to damage the national security.

(8) The term "theater component commander" means, with respect to any of the combatant commands, an officer of any of the armed forces who

(A) is commander of all forces of that armed force assigned to that combatant command, and

(B) is directly subordinate to the commander of the combatant command.

(9) The term "survival, evasion, resistance, and escape debriefing" means an interview conducted with a person described in section 1501 (c) of this title who is returned to United States control in order to record the person's experiences while surviving, evading, resisting interrogation or exploitation, or escaping.

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.

Section 1002 would provide the Department of Defense (DoD) with the specific statutory authority required to receive and effectively reinvest "miscellaneous receipts" obtained through a travel rebate or refund program commonly used in the private sector, a repayment of inaccurate charges, or a collection of an unused travel segment (e.g., airline ticket). Currently, no other authority exists today similar to that which allows refunds for the Government Travel Charge Card (GTCC) to be effectively used. This proposal will enable repayment and collections to be accomplished efficiently at the DoD-enterprise level based on data analysis versus working

through individual travel claims which is an unworkable and inefficient process. Recouping refunds on a per transaction basis is very costly if at all achievable. Such refunds could then be credited to Operations and Maintenance (O&M) funds and Research, Development, Test and Evaluation (RDT&E) funds available for current expenditure (versus refunding them to the original appropriation, which may no longer be available for current expenditure) just like the GTCC refunds.

This proposal would save the Department money and adhere to the Office of Management and Budget's (OMB's) directive to reduce spending related to official travel and to generate travel efficiencies. This proposal would assist DoD in following the guidance set forth in OMB Memorandum M-12-12, which directed all Federal agencies to spend at least 30% less on travel expenses covered by the memorandum than they spent in fiscal year (FY) 2010. This language also complements DoD efforts to pursue cost savings through programs like the Campaign to Cut Waste (CCW), which strives to make travel more efficient. Furthermore, generating refunds from managed travel programs enables DoD to create reinvestment efficiencies like the GTCC program. DoD already has similar authority under section 8067 of the Department of Defense Appropriations Act, 2008 (10 U.S.C. 2784 note) for refunds received through the GTCC program. Such programs incentivize DoD to engage the private sector to generate travel efficiencies where opportunities exist.

This proposal would benefit DoD by allowing the Department to credit refunds to current O&M and RDT&E funds rather than the original appropriations as is the case for the GTCC. Normally, refunds must be credited back to the original appropriation from which the expenditure being refunded was made. To credit a refund to a different appropriation absent specific statutory authority effectively augments the other appropriation, violating the Anti-Deficiency Act (31 U.S.C. 1341). This proposal would grant the Department legal authority to re-allocate or re-use those funds, allowing DoD to operate with funds derived from another source (e.g., refunds) authorized by this specific statutory authority.

The definition of a refund (i.e., rebate, reward, repayment, collection) is narrowly limited in this proposal to four categories of miscellaneous receipts all of which are, in fact, a return of funds the effect of which for accounting purposes are balancing debits and credits. In terms of obligation authority, a simplistic view of the flow of funds is that obligation authority is received (i.e., TOA), then funds are committed thus decreasing remaining authority, then a portion of those same commitments are returned to the Department raising the authority slightly, and then those same funds are re-obligated. This has a zerosum effect with no new funds (i.e., obligation authority) entering the accounting cycle. Understanding the definition of these terms reinforces the zero-sum effect refunds have on the TOA, as follows:

A rebate or reward is a deduction from an amount paid by way of reduction or return on what has already been paid. From a financial transaction perspective, it is a backend negotiated discount. Logically, there is no new money entering the process, but a recycle of already existing money.

A repayment or collection is an amount being reclaimed as a result of an overcharge (e.g., exceeds negotiated rate), service not used (e.g., unused ticket), duplicate charge (e.g., charged

twice), etc. This transaction is a return of a portion or all of the payment. Again, logically, there is no new money entering the process, but a recycle of already existing money. Currently, very few collections are processed because they are done inefficiently through individual travel claims. Therefore, only limited recoveries are made and there has been no incentive for the government to take action.

This proposal, unlike the GTCC statute, defines the boundaries and limits authority in terms of what constitutes a refund to prevent this authority from being misused. The refund must originate from official travel, defined further as managed travel programs. The proposal additionally requires refunds to be reinvested in just two ways: either travel or travel program efficiencies. Refunds reinvested in support of travel efficiencies will be outlined in financial management improvement program similar to that required for use of Improvement Payments Elimination and Recovery Act (IPERA) funds. This plan will be approved by one of the Department's travel governance boards (i.e., Defense Travel Improvement Board). DoD has not met the improper payment threshold (i.e., IPERA) the past several years and no funds are specifically allocated to take corrective action. Furthermore, this proposal limits what constitutes a refund and what is included in a managed travel program.

Travel refund programs in the private sector frequently include incentive programs for the traveler to encourage voluntary utilization, resulting in higher adoption rates and refunds. To avoid any possible narrow interpretation of what constitutes the "general public" under section 1116 of the NDAA for FY 2002 (5 U.S.C. 5702 note), the proposal makes clear that the Federal Government as a whole or an agency of the Federal Government is a large enough class to be considered the "general public". At present, the Federal Government has been determined to be a broad enough class to qualify as the "general public" and DoD comprises approximately 64% of all Federal travel spending.

Budget Implications: As this proposal enables refunds (i.e., refunds, rebates, repayment, collections, etc.) from travel programs to be credited to appropriations and re-obligated, it would result in significant cost savings (or cost avoidance) to the Department. As one example, rebates could be generated from a managed dining program. Using below assumptions, the following constructed example of savings is provided:

1) DoD spends over $1 billion in meal per diem per year.

2) If 15% (i.e., $150 million) of this meal per diem is spent through a managed dining program,

3) And if a rebate of 2% is received, the total DoD rebate would be $3 million.

4) Rebates are credited proportionally to the components based upon their percentage of participation in the program (for example, 20.5% Air Force, 37% Army, 5.5% Marines, 27.4% Navy, and 9.6% DoD). The distribution would be as displayed in the table below.

Program costs would be mostly absorbed by the third-party contractor, to include such costs as coordinating with restaurants, collecting and distributing rebates, program administrative costs, etc. The Defense Travel Management Office (DTMO) would perform tasks associated with contract management and distribution of funds through existing staff. This approach is similar to how the GTCC agreement works. In this process, Citibank operates the program for DoD, collects a rebate from merchants at no additional cost of goods/services, and then pays

DoD a share of the rebate on a quarterly basis. DoD's governance boards (e.g., Defense Travel Improvement Board) and senior leaders briefed to date have all been supportive of this initiative.

Effect of Amendment to title 37, United States Code (specific authority for DoD to reinvest travel refunds): The proposed legislation would save the Department approximately $904,000 annually.

RESOURCE REQUIREMENTS – COST SAVINGS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Air Force	$0	($.154)	($.154)	($.154)	($.154)	Operation and Maintenance, Air Force	01	011D	27603F
Air Force	$0	($.154)	($.154)	($.154)	($.154)	Operation and Maintenance, Air Force	03	032C	84751F
Air Force	$0	($.154)	($.154)	($.154)	($.154)	Research, Development, Test and Evaluation, Air Force	01	01	61102F
Air Force	$0	($.154)	($.154)	($.154)	($.154)	Research, Development, Test and Evaluation, Air Force	05	069	64800F
DoD	$0	($.288)	($.288)	($.288)	($.288)	Operation and Maintenance, Defense-Wide	04	300	0908388D8Z
Army does not intend to use this authority, which would have been funded in the following accounts: Operation and Maintenance, Army and Research, Development, Test and Evaluation, Army.									
Navy does not intend to use this authority, which would have been funded in the following accounts: Operation and Maintenance, Navy and Research, Development, Test and Evaluation, Navy.									
Marine Corps does not intend to use this authority, which would have been funded in the following account: Research, Development, Test and Evaluation, Navy.									
Total	$0	($.904)	($.904)	($.904)	($.904)				

NUMBER OF PERSONNEL AFFECTED					
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**
Air Force	0	203,172	203,172	203,172	203,172
DoD	0	52,716	52,716	52,716	52,716
Army does not intend to use this authority, which would have been funded in the following accounts: Operation and Maintenance, Army and Research, Development, Test and Evaluation, Army.					
Navy does not intend to use this authority, which would have been funded in the following accounts: Operation and Maintenance, Navy and Research,					

Development, Test and Evaluation, Navy.					
Marine Corps does not intend to use this authority, which would have been funded in the following account: Research, Development, Test and Evaluation, Navy					
Total	0	255,888	255,888	255,888	255,888

Changes to Existing Law: This proposal would add a new section to title 37, United States Code, set out in full in the legislative text above and would amend section 1116 of the National Defense Authorization Act for Fiscal Year 2002 (5 U.S.C. 5702 note) as follows:

SEC. 1116. RETENTION OF TRAVEL PROMOTIONAL ITEMS.

(a) ~~DEFINITION~~ DEFINITIONS.—In this section~~,~~:

(1) ~~the~~ The term ''agency'' has the meaning given that term under section 5701 of title 5, United States Code.

(2) The term "general public" includes the Federal Government or an agency.

(b) RETENTION OF TRAVEL PROMOTIONAL ITEMS.—To the extent provided under subsection (c), a Federal employee, member of the Foreign Service, member of a uniformed service, any family member or dependent of such an employee or member, or other individual who receives a promotional item (including frequent flyer miles, upgrade, or access to carrier clubs or facilities) as a result of using travel or transportation services obtained at Federal Government expense or accepted under section 1353 of title 31, United States Code, may retain the promotional item for personal use if the promotional item is obtained under the same terms as those offered to the general public and at no additional cost to the Federal Government.

(c) LIMITATION.—Subsection (b)—

(1) applies only to travel that—

(A) is at the expense of an agency; or

(B) is accepted by an agency under section 1353 of title 31, United States Code; and

(2) does not apply to travel by any officer, employee, or other official of the Government who is not in or under any agency.

(d) REGULATORY AUTHORITY.—Any agency with authority to prescribe regulations governing the acquisition, acceptance, use, or disposal of any travel or transportation services obtained at Government expense or accepted under section 1353 of title 31, United States Code, may prescribe regulations to carry out subsection (b) with respect to those travel or transportation services.

(e) REPEAL OF SUPERSEDED LAW.—Section 6008 of the Federal Acquisition Streamlining Act of 1994 (5 U.S.C. 5702 note; Public Law 103–355) is repealed.

(f) APPLICABILITY.—This section shall apply with respect to promotional items received before, on, or after the date of enactment of this Act.

Section 1003 would amend section 2782 of title 10, United States Code, to allow funds collected for damage to all property controlled by the Department of Defense (DoD) to be deposited into and obligated from the account responsible for the repair or replacement of the damaged Government property. Section 2782 currently provides authority to deposit the amount recovered for damage to real property into the account available for the repair or replacement of the real property at the time of recovery; however, the collected funds cannot be spent except as appropriated by law. Subsequent to the enactment of section 2782, no appropriations act has included the necessary language to allow expenditure of the funds, and thus the funds must continue to be held in the relevant account for six years and then returned to the General Treasury.

The proposed change would allow the military departments to expend funds collected for the repair or replacement of all Government property instead of returning the funds to the General Treasury after six years. Over the past three years, $1.3 million was collected for damage sustained to Air Force property, all of which eventually will be deposited into the General Treasury under current law. If the proposed changes are adopted, installation commanders would obtain the flexibility of spending the funds to repair or replace damaged Government property, rather than taking the necessary funds for such unanticipated repair or replacement out of their operating budgets.

This request is patterned after other Federal laws already in place that permit agencies to collect funds from liable third parties and to spend those funds to remediate the unanticipated effects of those actions. *See* Federal Medical Care Recovery Act (42 U.S.C. 2651) and Coordination of Benefits Statute (10 U.S.C. 1095(g)).

Enabling military units to expend funds collected under this law would provide a persuasive incentive for Federal agencies to dedicate resources towards the aggressive collection of funds that are owed to the Federal Government and deter wrongful conduct by tortfeasors who damage the property of the Federal Government by making it more likely they will be held responsible for their actions.

Budget Implications: The proposed changes would have no negative Department of Defense budgetary impact. Legal personnel already have affirmative claims programs in place to assert and collect these claims on behalf of the United States. The proposed change would allow the military departments to access and spend the funds recovered for damage to Government property without needing language from an appropriations act allowing the military departments to spend the funds. This would prevent installation commanders from having to take funds from their operating budgets to repair or replace unanticipated damage to Government property. By allowing this change military departments would not need to request an increase to their operating budgets due to the unanticipated cost of repairing or replacing damaged Government property.

AIR FORCE

FISCAL YEAR (FY)	COLLECTIONS ($)
FY 2016*	$610,689
FY 2015	$204,467
FY 2014	$551,000
FY 2013	$651,877
FY 2012	$451,442
TOTAL (FY 2012-16)	$2,469,475
ANNUAL AVERAGE	**$493,895**

*The FY 2016 figure is a projection for the entire fiscal year based upon current recovery activities and over the past two years.

ARMY

FISCAL YEAR	COLLECTIONS ($)
FY 2016*	$1,249,447
FY 2015	$1,109,839
FY 2014	$1,389,115
FY 2013	$1,428,618
FY 2012	$1,1538,091
TOTAL (FY 2012-16)	$6,715,140
ANNUAL AVERAGE	**$1,343,028**

*The FY 2016 figure is a projection for the entire fiscal year based upon recovery activities over the past two years.

NAVY

FISCAL YEAR	COLLECTIONS ($)
FY 2016*	$78,150
FY 2015	$229,753
FY 2014	$182,217
FY 2013	$168,000
FY 2012	$61,300
TOTAL (FY 2012-16)	$719,420
ANNUAL AVERAGE	**$143,884**

*The FY 2016 figure is a projection for the entire fiscal year based upon the recovery activities over the past two years.

Five-Year Projected Property Damage Collections (FY 2017-21)				
Fiscal Year	**Air Force**	**Navy**	**Army**	**DOD**
2017	$493,895	$143,884	$1,343,028	$1,980,807
2018	$493,895	$143,884	$1,343,028	$1,980,807
2019	$493,895	$143,884	$1,343,028	$1,980,807
2020	$493,895	$143,884	$1,343,028	$1,980,807
2021	$493,895	$143,884	$1,343,028	$1,980,807
Total	$2,469,475	$719,420	$6,715,140	$9,904,035

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	0.493	0.493	0.493	0.493	0.493	Operation and Maintenance, Air Force	01	011Z	28534F
Navy does not intend to use this authority, which would have been funded in Operation and Maintenance, Navy									
Army does not intend to use this authority, which would have been funded in Operation and Maintenance, Army									
Total	0.493	0.493	0.493	0.493	0.493	--	--	--	--

Changes to Existing Law: This proposal would make the following changes to section 2782 of title 10, United States Code:

§ 2782. Damage to ~~real~~ property: disposition of amounts recovered
Except as provided in section 2775 of this title, amounts recovered for damage caused to ~~real~~ property under the jurisdiction of the Secretary of a military department or, with respect to the Defense Agencies, under the jurisdiction of the Secretary of Defense shall be credited to the account available for the repair or replacement of the ~~real~~ property at the time of recovery. ~~In such amounts as are provided in advance in appropriation Acts, a~~Amounts so credited shall be merged with, and available for use for the same purposes and for the same period and under the same circumstances as, other funds in the account.

Subtitle B—Counter-Drug Activities

Section 1011 would extend the authority provided in section 1004 of the NDAA for Fiscal Year (FY) 1991 (Public Law 101–510; 104 Stat. 1629; 10 U.S.C. 374 note) (referred to as "section 1004 authority"). For more than two decades, Section 1004 authority has served as the foundation of Department of Defense counternarcotics support to Federal, State, local, tribal, and foreign law enforcement partners to stem the flow of illicit drugs into the United States. The authority has also proven critical in accomplishing broader national security objectives by deepening military-law enforcement cooperation and in building the counternarcotics capacity of our foreign partners. As such, section 1004 is an important tool for meeting U.S. national security objectives as outlined in the Quadrennial Defense Review and the Department's Counternarcotics and Global Threats Strategy. Extension of the authority would reflect the growing recognition of the linkages between transnational organized crime and national security threats.

Budget Implications: All costs are funded in the annual appropriation requests of the Drug Interdiction and Counter-Drug Activities, Defense Account. The resources reflected in the tables below are funded within the FY 2017 President's Budget.

Funds used under this authority are budgeted in the Drug Interdiction and Counter-Drug Activities, Defense appropriation.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	$464.1	$474.3	$485.2			Drug Interdiction and Counter Drug Activities, Defense	01	0105D	0208889D
Total	$464.1	$474.3	$485.2						

This proposal would make the following changes to section 1004 of the National Defense Authorization Act for FY 1991 (Public Law 101–510; 104 Stat. 1629; 10 U.S.C. 374 note), as most recently amended by section 1011 of the National Defense Authorization Act for FY 2015 (Public Law 113-291; 128 Stat. 3483):

Section 1004 of the National Defense Authorization Act for Fiscal Year 1991
(Public Law 101–510; 10 U.S.C. 374 note)

SEC. 1004. ADDITIONAL SUPPORT FOR COUNTER-DRUG ACTIVITIES AND ACTIVITIES TO COUNTER TRANSNATIONAL ORGANIZED CRIME.

(a) SUPPORT TO OTHER AGENCIES.— ~~During fiscal years 2012 through 2017~~ During fiscal years 2012 through 2019 the Secretary of Defense may provide support for the counter-drug activities or activities to counter transnational organized crime of any other department or agency of the Federal Government or of any State, local, tribal, or foreign law enforcement agency for any of the purposes set forth in subsection (b) if such support is requested—

(1) by the official who has responsibility for the counterdrug activities or activities to counter transnational organized crime of the department or agency of the Federal Government, in the case of support for other departments or agencies of the Federal Government;

(2) by the appropriate official of a State, or local, or tribal government, in the case of support for State, or local, or tribal law enforcement agencies; or

(3) by an appropriate official of a department or agency of the Federal Government that has counter-drug responsibilities or responsibilities for countering transnational organized crime, in the case of support for foreign law enforcement agencies.

(b) TYPES OF SUPPORT.—The purposes for which the Secretary of Defense may provide support under subsection (a) are the following:

(1) The maintenance and repair of equipment that has been made available to any department or agency of the Federal Government or to any State or local, or tribal government by the Department of Defense for the purposes of—

(A) preserving the potential future utility of such equipment for the Department of Defense; and

(B) upgrading such equipment to ensure compatibility of that equipment with other equipment used by the Department of Defense.

(2) The maintenance, repair, or upgrading of equipment (including computer

software), other than equipment referred to in paragraph (1) for the purpose of—

(A) ensuring that the equipment being maintained or repaired is compatible with equipment used by the Department of Defense; and

(B) upgrading such equipment to ensure the compatibility of that equipment with equipment used by the Department of Defense.

(3) The transportation of personnel of the United States and foreign countries (including per diem expenses associated with such transportation), and the transportation of supplies and equipment, for the purpose of facilitating counter-drug activities or activities to counter transnational organized crime within or outside the United States.

(4) The establishment (including an unspecified minor military construction project) and operation of bases of operations or training facilities for the purpose of facilitating counter-drug activities or activities to counter transnational organized crime of the Department of Defense or any Federal, State, or local, or tribal law enforcement agency within or outside the United States or for the purpose of facilitating counter-drug activities or activities to counter transnational organized crime of a foreign law enforcement agency outside the United States.

(5) Counter-drug or counter-transnational organized crime related training of law enforcement personnel of the Federal Government, of State, and local, and tribal governments, and of foreign countries, including associated support expenses for trainees and the provision of materials necessary to carry out such training.

(6) The detection, monitoring, and communication of the movement of—

(A) air and sea traffic within 25 miles of and outside the geographic boundaries of the United States; and

(B) surface traffic outside the geographic boundary of the United States and within the United States not to exceed 25 miles of the boundary if the initial detection occurred outside of the boundary.

(7) Construction of roads and fences and installation of lighting to block drug smuggling corridors across international boundaries of the United States.

(8) Establishment of command, control, communications, and computer networks for improved integration of law enforcement, active military, and National Guard activities.

(9) The provision of linguist and intelligence analysis services.

(10) Aerial and ground reconnaissance.

(c) LIMITATION ON COUNTER-DRUG REQUIREMENTS.—The Secretary of Defense may not limit the requirements for which support may be provided under subsection (a) only to critical, emergent, or unanticipated requirements.

(d) CONTRACT AUTHORITY.—In carrying out subsection (a), the Secretary of Defense may acquire services or equipment by contract for support provided under that subsection if the Department of Defense would normally acquire such services or equipment by contract for the purpose of conducting a similar activity for the Department of Defense.

(e) LIMITED WAIVER OF PROHIBITION.—Notwithstanding section 376 of title 10, United States Code, the Secretary of Defense may provide support pursuant to subsection (a) in any case in which the Secretary determines that the provision of such support would adversely affect the military preparedness of the United States in the short term if the Secretary determines that the importance of providing such support outweighs such short-term adverse effect.

(f) CONDUCT OF TRAINING OR OPERATION TO AID CIVILIAN AGENCIES.—In providing

support pursuant to subsection (a), the Secretary of Defense may plan and execute otherwise valid military training or operations (including training exercises undertaken pursuant to section 1206(a) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 103 Stat. 1564)) for the purpose of aiding civilian law enforcement agencies.

(g) RELATIONSHIP TO OTHER LAWS.—(1) The authority provided in this section for the support of counter-drug activities or activities to counter transnational organized crime by the Department of Defense is in addition to, and except as provided in paragraph (2), not subject to the requirements of chapter 18 of title 10, United States Code.

(2) Support under this section shall be subject to the provisions of section 375 and, except as provided in subsection (e), section 376 of title10, United States Code.

(h) CONGRESSIONAL NOTIFICATION OF FACILITIES PROJECTS.—(1) When a decision is made to carry out a military construction project described in paragraph (2), the Secretary of Defense shall submit to the congressional defense committees written notice of the decision, including the justification for the project and the estimated cost of the project. The project may be commenced only after the end of the 21-day period beginning on the date on which the written notice is received by Congress.

(2) Paragraph (1) applies to an unspecified minor military construction project that—

(A) is intended for the construction, modification, or repair of any facility for the purposes set forth in subsection (b)(4); and

(B) has an estimated cost of more than $250,000.

(3) This subsection may not be construed as an authorization for the use of funds for any military construction project that would exceed the approved cost limitations of an unspecified minor military construction project under section 2805(a)(2).

(i) DEFINITIONS RELATING TO TRIBAL GOVERNMENTS.—In this section:

(1) The term "Indian tribe" means a federally recognized Indian tribe.

(2) The term "tribal government" means the governing body of an Indian tribe, the status of whose land is "Indian country" as defined in section 1151 of title 18, United States Code, or *held in trust by the United States for the benefit of the Indian tribe.*

(3) The term "tribal law enforcement agency" means the law enforcement agency of a tribal government.

(j) DEFINITION OF TRANSNATIONAL ORGANIZED CRIME.−In this section, the term "transnational organized crime" means self-perpetuating associations of individuals who operate transnationally for the purpose of obtaining power, influence, monetary, or commercial gains, wholly or in part by illegal means, while protecting their activities through a pattern of corruption or violence or through a transnational organization structure and the exploitation of transnational commerce or communication mechanisms.

Section 1012 would extend section 1033 of the NDAA for FY 1998 (referred to as "section 1033 authority") through FY 2019 and reduce the congressional notification period from 60 days to 15 days. An extension of authority through FY 2019 would help improve out-year planning. Reducing the notification period for the counter-drug plans required by the authority would help expedite the provision of counternarcotics-related equipment and help ensure that appropriated funds can be executed before the end of the relevant FY. Linking the authority period to a particular FY instead of a specific calendar date would allow the expiring authority to be temporarily extended through continuing resolutions and prevent the unintended lapse of the authority should the reauthorizing NDAA be enacted after the end of a particular fiscal year.

Reducing the notification period to 15 days would allow for sufficient time for congressional review and align the notification period for counter-drug plans with that for the certification required under subsection (f) of Section 1033.

Budget Implications: All costs are funded in the annual appropriation requests of the Drug Interdiction and Counter-Drug Activities, Defense Account. The resources reflected in the tables below are funded within the FY 2017 President's Budget.

Funds used under this authority are budgeted in the Drug Interdiction and Counter-Drug Activities, Defense appropriation. The current cap on Section 1033 authority is $125 million per year.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	$125	$125	$125			Drug Interdiction and Counter Drug Activities, Defense	01	0105D	0208889D
Total	$125	$125	$125						

Changes to Existing Law: This proposal would make the following changes to section 1033 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85, Nov. 18, 1997), as most recently amended by section 1012 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 129 Stat. 963):

SEC. 1033. AUTHORITY TO PROVIDE ADDITIONAL SUPPORT FOR COUNTER-DRUG ACTIVITIES OF OTHER COUNTRIES.

(a) AUTHORITY TO PROVIDE SUPPORT.—(1) Subject to subsection (f), the Secretary of Defense may provide any of the foreign governments named in subsection (b) with the support described in subsection (c) for the counter-drug activities of that government. In providing support to a government under this section, the Secretary of Defense shall consult with the Secretary of State. The support provided under the authority of this section shall be in addition to support provided to the governments under any other provision of law.

(2) The authority to provide support to a government under this section ~~expires September 30, 2017~~ shall be available until the end of fiscal year 2019.

(b) GOVERNMENTS ELIGIBLE TO RECEIVE SUPPORT.—The foreign governments eligible to receive counter-drug support under this section are as follows:

(1) The Government of Peru.
(2) The Government of Colombia.
(3) The Government of Afghanistan.
(4) The Government of Bolivia.
(5) The Government of Ecuador.
(6) The Government of Pakistan.
(7) The Government of Tajikistan.
(8) The Government of Turkmenistan.

(9) The Government of Uzbekistan.
(10) The Government of Azerbaijan.
(11) The Government of Kazakhstan.
(12) The Government of Kyrgyzstan.
(13) The Government of Armenia.
(14) The Government of Guatemala.
(15) The Government of Belize.
(16) The Government of Panama.
(17) The Government of Mexico.
(18) The Government of the Dominican Republic.
(19) The Government of Guinea-Bissau.
(20) The Government of Senegal.
(21) The Government of El Salvador.
(22) The Government of Honduras.
(23) Government of Benin.
(24) Government of Cape Verde.
(25) Government of The Gambia.
(26) Government of Ghana.
(27) Government of Guinea.
(28) Government of Ivory Coast.
(29) Government of Jamaica.
(30) Government of Liberia.
(31) Government of Mauritania.
(32) Government of Nicaragua.
(33) Government of Nigeria.
(34) Government of Sierra Leone.
(35) Government of Togo.
(36) The Government of Chad.
(37) The Government of Libya.
(38) The Government of Mali.
(39) The Government of Niger.
(40) Government of Kenya.
(41) Government of Tanzania.

(c) TYPES OF SUPPORT.—The authority under subsection (a) is limited to the provision of the following types of support to a government named in subsection (b):

(1) The types of support specified in paragraphs (1), (2), and (3) of section 1031(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201; 110 Stat. 2637).[5]

[5] (1) The transfer of nonlethal protective and utility personnel equipment.
(2) The transfer of the following nonlethal specialized equipment:
(A) Navigation equipment.
(B) Secure and nonsecure communications equipment.
(C) Photo equipment.
(D) Radar equipment.
(E) Night vision systems.
(F) Repair equipment and parts for equipment referred to in subparagraphs (A), (B), (C), (D), and (E).

(2) The transfer of patrol boats, vehicles, and, subject to section 484(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291c(a)), aircraft.

(3) The maintenance and repair or upgrade of equipment of the government that is used for counter-drug activities.

(4) The transfer of detection, interception, monitoring and testing equipment.

(5) For the Government of Afghanistan only, individual and crew served weapons of 50 caliber or less and ammunition for such weapons for counter-narcotics security forces.

(d) APPLICABILITY OF OTHER SUPPORT AUTHORITIES.—Except as otherwise provided in this section, the provisions of section 1004 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 10 U.S.C. 374 note), shall apply to the provision of support under this section.

(e) AVAILABILITY OF FUNDS.—Of the amount authorized to be appropriated for any fiscal year after fiscal year 2014 in which the authority under this section is in effect for drug interdiction and counter-drug activities, an amount not to exceed $125,000,000 shall be available in such fiscal year for the provision of support under this section.

(f) CONDITION ON PROVISION OF SUPPORT.—

(1) The Secretary of Defense may not obligate or expend funds during a fiscal year to provide support under this section to a government named in subsection (b) until the end of the 15-day period beginning on the date on which the Secretary submits to the congressional committees a written certification described in subsection (g) applicable to that fiscal year. The first such certification with respect to any such government may apply only to a period of one fiscal year. Subsequent certifications with respect to any such government may apply to a period of not to exceed two fiscal years.

(2) In the case of funds appropriated and available for support under this section to a government named in subsection (b), the obligation or expenditure of funds under this section to provide support to that government shall also be subject to the condition that—

(A) the Secretary submit to the congressional committees the counter-drug plan described in subsection (h); and

(B) a period of ~~60 days~~ 15 days expires after the date on which the report is submitted.

(3) In the case of subsequent fiscal years in which support is to be provided under this section to a government named in subsection (b), the obligation or expenditure of funds under this section to provide support to that government shall also be subject to the condition that the Secretary submit to the congressional committees any revision of the counter-drug plan described in subsection (h) applicable to that government.

(4) For purposes of this subsection, the term "congressional committees" means the following:

(A) The Committee on Armed Services and the Committee on Foreign Relations of the Senate.

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(3) The transfer of nonlethal components, accessories, attachments, parts (including ground support equipment), firmware, and software for aircraft or patrol boats, and related repair equipment.

(B) The Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

(g) REQUIRED CERTIFICATION.—A written certification required by subsection (f)(1) for a government to receive support under this section for any period of time is a certification of each of the following with respect to that government:

(1) That the provision of the support to the government will not adversely affect the military preparedness of the United States Armed Forces.

(2) That the equipment and materiel provided as support will be used only by officials and employees of the government who have undergone background investigations by that government and have been approved by that government to perform counter-drug activities on the basis of the background investigations.

(3) That the government has certified to the Secretary of Defense that—

(A) the equipment and materiel provided as support will be used only by the officials and employees referred to in paragraph (2);

(B) none of the equipment or materiel will be transferred (by sale, gift, or otherwise) to any person or entity not authorized by the United States to receive the equipment or materiel; and

(C) the equipment and materiel will be used only for the purposes intended by the United States Government.

(4) That the government has implemented, to the satisfaction of the Secretary of Defense, a system that will provide an accounting and inventory of the equipment and materiel provided as support.

(5) That the departments, agencies, and instrumentalities of the government will grant United States Government personnel access to any of the equipment or materiel provided as support, or to any of the records relating to such equipment or materiel, under terms and conditions similar to the terms and conditions imposed with respect to such access under section 505(a)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2314(a)(3)).

(6) That the government will provide security with respect to the equipment and materiel provided as support that is substantially the same degree of security that the United States Government would provide with respect to such equipment and materiel.

(7) That the government will permit continuous observation and review by United States Government personnel of the use of the equipment and materiel provided as support under terms and conditions similar to the terms and conditions imposed with respect to such observation and review under section 505(a)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2314(a)(3)).

(h) COUNTER-DRUG PLAN.—The Secretary of Defense, in consultation with the Secretary of State, shall prepare for each fiscal year (and revise as necessary for subsequent fiscal years) a counter-drug plan involving the governments named in subsection (b) to which support will be provided under this section. The plan for a fiscal year shall include the following with respect to each government to receive support under this section:

(1) A detailed security assessment, including a discussion of the threat posed by illicit drug traffickers in the foreign country.

(2) An evaluation of previous and ongoing counter-drug operations by the government.

(3) An assessment of the monitoring of past and current assistance provided by the United States under this section to the government to ensure the appropriate use of such assistance.

(4) A description of the centralized management and coordination among Federal agencies involved in the development and implementation of the plan.

(5) A description of the roles and missions and coordination among agencies of the government involved in the development and implementation of the plan.

(6) A description of the resources to be contributed by the Department of Defense and the Department of State for the fiscal year or years covered by the plan and the manner in which such resources will be utilized under the plan.

(7) Each fiscal year in which support is to be provided to a government under this section, a schedule for establishing a counter-drug program that can be sustained by the government within five years, and for subsequent fiscal years, a description of the progress made in establishing and carrying out the program.

(8) A reporting system to measure the effectiveness of the counter-drug program.

(9) A detailed discussion of how the counter-drug program supports the national drug control strategy of the United States.

Section 1013 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.

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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) ***

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(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.

Section 1024 would amend section 2649 of title 10, United States Code, to reinstate the authority of the Secretary of Defense to provide transportation to allied military personnel and civilians in contingencies or disaster responses on a noninterference basis, without charge, and expand said authority to include allied and civilian cargo as well as passengers. In addition, a new subsection would authorize the Secretary of Defense to enter into a contract or other

arrangement with one or more commercial providers, to provide commercial insurance products to non-DoD shippers using the Defense Transportation System.

Reinstating and expanding the Secretary's authority to provide transportation to allied and civilian personnel and cargo, on a noninterference basis without charge, during contingencies or disasters when the Secretary determines operations in the area would be facilitated by providing such transportation, would arm the Secretary of Defense with a valuable tool for managing an effective response to the contingency or disaster. Time is typically of the essence in such situations, and the infrastructure needed to capture and account for non-DoD personnel and cargo and effect reimbursement is often unavailable in the early stages of a response. In addition, there are frequently situations where an ally or organization may have the ability to make a valuable contribution, but lacks transportation or the resources to procure it. Since this authority would be limited to providing transportation on a noninterference basis, when space is available on Department of Defense aircraft or vessels already scheduled to perform missions, its use would also serve to make the most efficient use of transportation capacity at a time when such efficiency is imperative, at no cost to the United States.

The proposed new subsection (d) of section 2649 would authorize the Secretary of Defense to enter into a contract or other arrangement with insurance providers to make commercial insurance products available to non-DoD shippers using the Defense Transportation System (DTS). Non-DoD shippers using the DTS include foreign governments and entities, state and federal agencies, government contractors, and private parties in some circumstances. At present, there is typically little to no ability to recover damages in the event the cargo they ship in the DTS is lost or damaged. This proposal would enable the Department, via commercial providers, to offer commercial insurance coverage to shippers desiring such coverage. There would be no cost to the United States in making this coverage available, and in some circumstances a shipper having such coverage may actually serve to reduce the potential liability exposure of the United States.

Finally, cross-reference amendments would be made to subsection (b) of section 2649. Although subsections (c) and (d) would not generate receipts subject to subsection (b), for clarity's sake subsection (b) is revised to indicate that it applies to receipts generated pursuant to subsection (a), thus clarifying that subsection (b) retains the same scope as it has under current law.

Budget Implications: If enacted, this proposal would not increase the budgetary requirements of the Department of Defense.

Cost Methodology: The cost of transporting allied personnel, cargo, and civilians on already scheduled missions on a noninterference basis, on aircraft and vessels with excess capacity, is typically nil or very negligible. Aside from possible negligible administrative costs associated with setting up the commercial contract or arrangement proposed in subsection (d), there is no cost associated with permitting commercial providers to provide insurance products to DTS shippers.

Changes to Existing Law: This proposal would make the following changes to section 2649 of title 10, United States Code:

§ 2649. Civilian passengers and commercial cargoes: transportation on Department of Defense vessels, vehicles, and aircraft.

(a) AUTHORITY.—Whenever space is unavailable on commercial lines and is available on vessels, vehicles, or aircraft operated by the Department of Defense, civilian passengers and commercial cargo may, in the discretion of the Secretary of Defense, be transported on those vessels, vehicles, or aircraft. Rates for transportation under this section may not be less than those charged by commercial lines for the same kinds of service, except that in the case of transportation provided in response to an emergency, a disaster, or a request for humanitarian assistance, any amount charged for such transportation may not exceed the cost of providing the transportation.

(b) CREDITING OF RECEIPTS.—Any amounts received under ~~this section~~ subsection (a) with respect to transportation provided in response to an emergency, a disaster, or a request for humanitarian assistance may be credited to the appropriation, fund, or account used in incurring the obligation for which such amount is received. In all other cases, amounts received under ~~this section~~ subsection (a) shall be covered into the Treasury as miscellaneous receipts.

(c) TRANSPORTATION OF ALLIED ~~PERSONNEL~~ AND CIVILIAN PERSONNEL AND CARGO DURING CONTINGENCIES OR DISASTER RESPONSES.— ~~Until January 6, 2016, when~~ When space is available on vessels, vehicles, or aircraft operated by the Department of Defense and the Secretary of Defense determines operations in the area of a contingency operation or disaster response would be facilitated if allied ~~forces or civilians~~ and civilian personnel and cargo were to be transported using such vessels, vehicles, or aircraft, the Secretary may provide such transportation on a noninterference basis, without charge.

(d) COMMERCIAL INSURANCE.—The Secretary may enter into a contract or other arrangement with one or more commercial providers to make insurance products available to non-Department of Defense shippers using the Defense Transportation System, to insure against the loss or damage of the shipper's cargo. Any such contract or arrangement shall provide that—

(1) any insurance premium is collected by the commercial provider;

(2) any claim for loss or damage is processed and paid by the commercial provider;

(3) the commercial provider agrees to hold the United States harmless and waive any recourse against the United States for amounts paid to an insured as a result of a claim; and

(4) the contract between the commercial provider and the insured shall contain a provision whereby the insured waives any claim against the United States for loss or damage that is within the scope of enumerated risks covered by the insurance product.

Section 1025 would suspend for two years the requirement that all expenditures for national defense sealift purposes must be made through the National Defense Sealift Fund and that all appropriations for national defense sealift purposes must be deposited into that Fund.

The National Defense Sealift Fund (NDSF) was created by the Fiscal Year (FY) 1993 National Defense Authorization Act, Public Law 102-484, to address sealift funding issues using a revolving fund concept. Subsequent to its creation, the legal provisions of the NSDF have changed on several occasions, including changing the definitions of what constitutes a sealift asset. These changes have been included in the National Defense Authorization Acts for Fiscal Years 1997, 2000, 2001, 2002, 2004, 2007 and 2009.

In practice, the NDSF has never operated as a revolving fund. Congress appropriates funds in the Revolving Fund Title, but requires compliance with other financial policies (e.g. the procurement budget activity must reflect full funding). In addition, different funds within the NDSF account are not treated completely as a revolving fund. Moreover, there is a growing sentiment, at least with the appropriations committees, that no future sealift ships should be constructed utilizing the NDSF. This sentiment was reflected in the FY 2013 Department of Defense (DoD) Appropriations Act whereby the funding for TAO-X research and development was included in the Research, Development, Test, and Evaluation, Navy (RDT&E, N) appropriation, rather than the NDSF. Similarly, the FY 2014 President's Budget requested, and funding was appropriated for, the last Mobile Landing Platform in the Shipbuilding and Conversion, Navy (SCN) appropriation, rather than the NDSF. Subsequently, the FY 2016 budget requested the construction of the TAO-X in SCN.

As a result of these changes over the years, the Department of the Navy (DON) evaluated the continued need for an NDSF account. While it is certainly important to continue to support funding for sealift requirements, the DON determined that there were other viable funding mechanisms to support this effort. Working within the DON, and with other sealift partners such as the U.S. Transportation Command (USTRANSCOM) and the Maritime Administration (MARAD), the decision was made to eliminate funding requests in the NDSF account commencing with the FY 2017 budget submission. Funding requirements will continue to be met by budgeting ship construction in SCN, research and development in RDT&E,N program elements, and operation and maintenance needs in O&M,N.

The budget change will preserve funding for sealift requirements while providing the DON one less appropriation to manage, prepare financial statements for, and address for financial auditability purposes. In addition, it streamlines the funding flow by reducing reimbursable documents that have to flow between Navy commands when a ship is activated. Overall, the change in the budget structure will be more efficient while still supporting sealift requirements.

The "Buy American" restrictions of 10 USC 2218(c)(1)(C) and (E) would continue to apply to expenditures made using appropriated funds other than through the NDSF while clarifying that such funds are available for all vessels in the National Defense Reserve Fleet

(NDRF). Such clarification is needed because almost two-thirds of the vessels currently in the Ready Reserve Force component of the NDRF, including many critical ROROs, were foreign-built vessels specifically authorized to be included in the fleet prior to the enactment of the NDSF or transferred to the fleet from DOD (the FSSs). The proposal also contains "Buy American" restrictions that are equivalent to those in subsection (f) to require that the construction, alteration, and conversion of vessels shall be conducted in United States shipyards and shall be subject to section 1424(b) of Public Law 101–510 (104 Stat. 1683), unless otherwise specifically authorized by law". This change has no budgetary impact.

Budget Implications: The FY 2017 President's Budget requests no funding in the NDSF account. Funding is realigned, to finance sealift requirements, in RDT&E, N, and O&M, N.

RESOURCE REQUIREMENTS ($ MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	-55.5	-32.3	-37.6	-60.2	-32.8	National Defense Sealift Fund	02	080	0408042N
	-157.1	-116.8	-119.0	-137.8	-140.8	National Defense Sealift Fund	02	060	0408042N
	-274.5	-284.8	-289.9	-295.6	-301.0	National Defense Sealift Fund	05	100	0408042N
	-23.7	-8.5	-16.9	-17.2	-17.0	National Defense Sealift Fund	02	070	0408042N
	-19.7	-18.6	-15.2	-15.1	-15.4	National Defense Sealift Fund	04	090	0408042N
Total	-530.5	-461.0	-478.6	-525.9	-507.0				
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	180.8	125.3	135.9	155.0	157.8	Operation and Maintenance, Navy	02	2A1F	0408042N
	274.5	284.8	289.9	295.6	301.0	Operation and Maintenance, Navy	02	2A2F	0408042N
	55.5	32.3	37.6	60.2	32.8	Operation and Maintenance, Navy	02	2C1H	0408042N

	4.2	6.5	6.3	6.0	6.2	Research, Development, Test and Evaluation, Navy	04	44	0603563N
	14.8	11.6	8.9	9.1	9.3	Research, Development, Test and Evaluation, Navy	04	45	0603564N
	0.7	0.5	0	0	0	Research, Development, Test and Evaluation, Navy	05	126	0604567N
Total	530.5	461.0	478.6	525.9	507.0				
Net	0	0	0	0	0				

Changes to Existing Law: This proposal would make the following changes to section 2218 of title 10, United States Code:

§ 2218. National Defense Sealift Fund

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the "National Defense Sealift Fund".

(b) ADMINISTRATION OF FUND.—The Secretary of Defense shall administer the Fund consistent with the provisions of this section.

(c) FUND PURPOSES.—(1) Funds in the National Defense Sealift Fund shall be available for obligation and expenditure only for the following purposes:

(A) Construction (including design of vessels), purchase, alteration, and conversion of Department of Defense sealift vessels.

(B) Operation, maintenance, and lease or charter of Department of Defense vessels for national defense purposes.

(C) Installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States.

(D) Research and development relating to national defense sealift.

(E) Expenses for maintaining the National Defense Reserve Fleet under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the costs of acquisition of vessels for, and alteration and conversion of vessels in (or to be placed in), the fleet, but only for vessels built in United States shipyards.

(2) Funds in the National Defense Sealift Fund may be obligated or expended only in amounts authorized by law.

~~(3) Funds obligated and expended for a purpose set forth in subparagraph (B) or (D) of paragraph (1) may be derived only from funds deposited in the National Defense Sealift Fund pursuant to subsection (d)(1).~~

(3) Amounts may be obligated or expended for a purpose set forth in subparagraph (B) or (D) of paragraph (1) only from—

(A) funds appropriated for any of fiscal years 2017 through 2018 that are otherwise available for such purpose; or

(B) funds deposited in the Fund pursuant to subsection (d)(1).

(4) Funds appropriated for the Department of Defense for fiscal years 2017 through 2018 that are available—

(A) for the installation and maintenance of defense features for national defense purposes on privately owned and operated vessels may be obligated and expended for such purpose only for vessels that are constructed in the United States and documented under the laws of the United States; and

(B) for expenses for maintaining the National Defense Reserve Fleet under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the costs of acquisition of vessels for, and alteration and conversion of vessels in (or to be placed in), the fleet, may be obligated and expended for such purposes only for vessels built in United States shipyards or vessels authorized for inclusion in the National Defense Reserve Fleet and only in accordance with section 1424(b) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note).

(d) DEPOSITS.—There shall be deposited in the Fund the following:

(1) All funds appropriated to the Department of Defense for a fiscal year after fiscal year 2018 for—

(A) construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(B) operations, maintenance, and lease or charter of national defense sealift vessels;

(C) installation and maintenance of defense features for national defense purposes on privately owned and operated vessels; and

(D) research and development relating to national defense sealift.

(2) All receipts from the disposition of national defense sealift vessels, excluding receipts from the sale, exchange, or scrapping of National Defense Reserve Fleet vessels under sections 57101–57104 and chapter 573 of title 46.

(3) All receipts from the charter of vessels under section 1424(c) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note).

(e) ACCEPTANCE OF SUPPORT.—(1) The Secretary of Defense may accept from any person, foreign government, or international organization any contribution of money, personal property (excluding vessels), or assistance in kind for support of the sealift functions of the Department of Defense.

(2) Any contribution of property accepted under paragraph (1) may be retained and used by the Department of Defense or disposed of in accordance with procedures prescribed by the Secretary of Defense.

(3) The Secretary of Defense shall deposit in the Fund money and receipts from the disposition of any property accepted under paragraph (1).

(f) LIMITATIONS.—(1) A vessel built in a foreign ship yard may not be purchased with funds in the National Defense Sealift Fund pursuant to subsection (c)(1), unless specifically authorized by law.

(2) Construction, alteration, or conversion of vessels with funds in the National Defense Sealift Fund pursuant to subsection (c)(1) shall be conducted in United States ship yards and shall be subject to section 1424(b) of ~~Public Law 101–510 (104 Stat. 1683)~~ the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note).

(g) EXPIRATION OF FUNDS AFTER 5 YEARS.—No part of an appropriation that is deposited in the National Defense Sealift Fund pursuant to subsection (d)(1) shall remain available for obligation more than five years after the end of fiscal year for which appropriated except to the extent specifically provided by law.

(h) BUDGET REQUESTS.—Budget requests submitted to Congress for the National Defense Sealift Fund shall separately identify—

(1) the amount requested for programs, projects, and activities for construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(2) the amount requested for programs, projects, and activities for operation, maintenance, and lease or charter of national defense sealift vessels;

(3) the amount requested for programs, projects, and activities for installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States; and

(4) the amount requested for programs, projects, and activities for research and development relating to national defense sealift.

(i) TITLE OR MANAGEMENT OF VESSELS.—Nothing in this section (other than subsection (c)(1)(E)) shall be construed to affect or modify title to, management of, or funding responsibilities for, any vessel of the National Defense Reserve Fleet, or assigned to the Ready Reserve Force component of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).

(j) CONTRACTS FOR INCORPORATION OF DEFENSE FEATURES IN COMMERCIAL VESSELS.—(1) The head of an agency may enter into a contract with a company submitting an offer for that company to install and maintain defense features for national defense purposes in one or more commercial vessels owned or controlled by that company in accordance with the purpose for which funds in the National Defense Sealift Fund are available under subsection (c)(1)(C). The head of the agency may enter into such a contract only after the head of the agency makes a determination of the economic soundness of the offer. As consideration for a contract with the head of an agency under this subsection, the company entering into the contract shall agree with the Secretary of Defense to make any vessel covered by the contract available to the Secretary, fully crewed and ready for sea, at any time at any port determined by the Secretary, and for whatever duration the Secretary determines necessary.

(2) The head of an agency may make advance payments to the contractor under a contract under paragraph (1) in a lump sum, in annual payments, or in a combination thereof for costs associated with the installation and maintenance of the defense features on a vessel covered by the contract, as follows:

(A) The costs to build, procure, and install a defense feature in the vessel.

(B) The costs to periodically maintain and test any defense feature on the vessel.

(C) Any increased costs of operation or any loss of revenue attributable to the installation or maintenance of any defense feature on the vessel.

(D) Any additional costs associated with the terms and conditions of the contract.

(E) Payments of such sums as the Government would otherwise expend, if the vessel were placed in the Ready Reserve Fleet, for maintaining the vessel in the status designated as "ROS–4 status" in the Ready Reserve Fleet for 25 years.

(3) For any contract under paragraph (1) under which the United States makes advance payments under paragraph (2) for the costs associated with installation or maintenance of any defense feature on a commercial vessel, the contractor shall provide to the United States such security interests in the vessel, by way of a preferred mortgage under section 31322 of title 46 or otherwise, as the head of the agency may prescribe in order to adequately protect the United States against loss for the total amount of those costs.

(4) Each contract entered into under this subsection shall—

(A) set forth terms and conditions under which, so long as a vessel covered by the contract is owned or controlled by the contractor, the contractor is to operate the vessel for the Department of Defense notwithstanding any other contract or commitment of that contractor; and

(B) provide that the contractor operating the vessel for the Department of Defense shall be paid for that operation at fair and reasonable rates.

(5) The head of an agency may not delegate authority under this subsection to any officer or employee in a position below the level of head of a procuring activity.

(6) The head of an agency may not enter into a contract under paragraph (1) that would provide for payments to the contractor as authorized in paragraph (2)(E) until notice of the proposed contract is submitted to the congressional defense committees and a period of 90 days has elapsed.

(k) DEFINITIONS.—In this section:

(1) The term "Fund" means the National Defense Sealift Fund established by subsection (a).

(2) The term "Department of Defense sealift vessel" means any ship owned, operated, controlled, or chartered by the Department of Defense that is any of the following:

(A) A fast sealift ship, including any vessel in the Fast Sealift Program established under section 1424 of Public Law 101–510 (104 Stat. 1683).

(B) Any other auxiliary vessel that was procured or chartered with specific authorization in law for the vessel, or class of vessels, to be funded in the National Defense Sealift Fund.

(3) The term "national defense sealift vessel" means—

(A) a Department of Defense sealift vessel; and

(B) a national defense reserve fleet vessel, including a vessel in the Ready Reserve Force maintained under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).

(4) The term "head of an agency" has the meaning given that term in section 2302(1) of this title.

~~rth in subparagraph (B) or (D) of paragraph (1) may be derived only from funds deposited in the National Defense Sealift Fund pursuant to subsection (d)(1).~~

(3) Amounts may be obligated or expended for a purpose set forth in subparagraph (B) or (D) of paragraph (1) only from—

(A) funds appropriated for any of fiscal years 2017 through 2018 that are otherwise available for such purpose; or

(B) funds deposited in the Fund pursuant to subsection (d)(1).

(4) Funds appropriated for the Department of Defense for fiscal years 2017 through 2018 that are available—

(A) for the installation and maintenance of defense features for national defense purposes on privately owned and operated vessels may be obligated and expended for such purpose only for vessels that are constructed in the United States and documented under the laws of the United States; and

(B) for expenses for maintaining the National Defense Reserve Fleet under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the costs of acquisition of vessels for, and alteration and conversion of vessels in (or to be placed in), the fleet, may be obligated and expended for such purposes only for vessels built in United States shipyards or vessels authorized for inclusion in the National Defense Reserve Fleet and only in accordance with section 1424(b) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note).

(d) DEPOSITS.—There shall be deposited in the Fund the following:

(1) All funds appropriated to the Department of Defense for a fiscal year after fiscal year 2018 for—

(A) construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(B) operations, maintenance, and lease or charter of national defense sealift vessels;

(C) installation and maintenance of defense features for national defense purposes on privately owned and operated vessels; and

(D) research and development relating to national defense sealift.

(2) All receipts from the disposition of national defense sealift vessels, excluding receipts from the sale, exchange, or scrapping of National Defense Reserve Fleet vessels under sections 57101–57104 and chapter 573 of title 46.

(3) All receipts from the charter of vessels under section 1424(c) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note).

(e) ACCEPTANCE OF SUPPORT.—(1) The Secretary of Defense may accept from any person, foreign government, or international organization any contribution of money, personal property (excluding vessels), or assistance in kind for support of the sealift functions of the Department of Defense.

(2) Any contribution of property accepted under paragraph (1) may be retained and used by the Department of Defense or disposed of in accordance with procedures prescribed by the Secretary of Defense.

(3) The Secretary of Defense shall deposit in the Fund money and receipts from the disposition of any property accepted under paragraph (1).

(f) LIMITATIONS.—(1) A vessel built in a foreign ship yard may not be purchased with funds in the National Defense Sealift Fund pursuant to subsection (c)(1), unless specifically authorized by law.

(2) Construction, alteration, or conversion of vessels with funds in the National Defense Sealift Fund pursuant to subsection (c)(1) shall be conducted in United States ship yards and shall be subject to section 1424(b) of ~~Public Law 101–510 (104 Stat. 1683)~~ the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note).

(g) EXPIRATION OF FUNDS AFTER 5 YEARS.—No part of an appropriation that is deposited in the National Defense Sealift Fund pursuant to subsection (d)(1) shall remain available for obligation more than five years after the end of fiscal year for which appropriated except to the extent specifically provided by law.

(h) BUDGET REQUESTS.—Budget requests submitted to Congress for the National Defense Sealift Fund shall separately identify—

(1) the amount requested for programs, projects, and activities for construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(2) the amount requested for programs, projects, and activities for operation, maintenance, and lease or charter of national defense sealift vessels;

(3) the amount requested for programs, projects, and activities for installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States; and

(4) the amount requested for programs, projects, and activities for research and development relating to national defense sealift.

(i) TITLE OR MANAGEMENT OF VESSELS.—Nothing in this section (other than subsection (c)(1)(E)) shall be construed to affect or modify title to, management of, or funding responsibilities for, any vessel of the National Defense Reserve Fleet, or assigned to the Ready Reserve Force component of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).

(j) CONTRACTS FOR INCORPORATION OF DEFENSE FEATURES IN COMMERCIAL VESSELS.—(1) The head of an agency may enter into a contract with a company submitting an offer for that company to install and maintain defense features for national defense purposes in one or more commercial vessels owned or controlled by that company in accordance with the purpose for which funds in the National Defense Sealift Fund are available under subsection (c)(1)(C). The head of the agency may enter into such a contract only after the head of the agency makes a determination of the economic soundness of the offer. As consideration for a contract with the head of an agency under this subsection, the company entering into the contract shall agree with the Secretary of Defense to make any vessel covered by the contract available to the Secretary, fully crewed and ready for sea, at any time at any port determined by the Secretary, and for whatever duration the Secretary determines necessary.

(2) The head of an agency may make advance payments to the contractor under a contract under paragraph (1) in a lump sum, in annual payments, or in a combination thereof for costs associated with the installation and maintenance of the defense features on a vessel covered by the contract, as follows:

(A) The costs to build, procure, and install a defense feature in the vessel.

(B) The costs to periodically maintain and test any defense feature on the vessel.

(C) Any increased costs of operation or any loss of revenue attributable to the installation or maintenance of any defense feature on the vessel.

(D) Any additional costs associated with the terms and conditions of the contract.

(E) Payments of such sums as the Government would otherwise expend, if the vessel were placed in the Ready Reserve Fleet, for maintaining the vessel in the status designated as "ROS–4 status" in the Ready Reserve Fleet for 25 years.

(3) For any contract under paragraph (1) under which the United States makes advance payments under paragraph (2) for the costs associated with installation or maintenance of any defense feature on a commercial vessel, the contractor shall provide to the United States such security interests in the vessel, by way of a preferred mortgage under section 31322 of title 46 or otherwise, as the head of the agency may prescribe in order to adequately protect the United States against loss for the total amount of those costs.

(4) Each contract entered into under this subsection shall—

(A) set forth terms and conditions under which, so long as a vessel covered by the contract is owned or controlled by the contractor, the contractor is to operate the vessel for the Department of Defense notwithstanding any other contract or commitment of that contractor; and

(B) provide that the contractor operating the vessel for the Department of Defense shall be paid for that operation at fair and reasonable rates.

(5) The head of an agency may not delegate authority under this subsection to any officer or employee in a position below the level of head of a procuring activity.

(6) The head of an agency may not enter into a contract under paragraph (1) that would provide for payments to the contractor as authorized in paragraph (2)(E) until notice of the proposed contract is submitted to the congressional defense committees and a period of 90 days has elapsed.

(k) DEFINITIONS.—In this section:

(1) The term "Fund" means the National Defense Sealift Fund established by subsection (a).

(2) The term "Department of Defense sealift vessel" means any ship owned, operated, controlled, or chartered by the Department of Defense that is any of the following:

(A) A fast sealift ship, including any vessel in the Fast Sealift Program established under section 1424 of Public Law 101–510 (104 Stat. 1683).

(B) Any other auxiliary vessel that was procured or chartered with specific authorization in law for the vessel, or class of vessels, to be funded in the National Defense Sealift Fund.

(3) The term "national defense sealift vessel" means—

(A) a Department of Defense sealift vessel; and

(B) a national defense reserve fleet vessel, including a vessel in the Ready Reserve Force maintained under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).

(4) The term "head of an agency" has the meaning given that term in section 2302(1) of this title.

Section 1026 would amend section 2637 of title 10, United States Code, and reference section 1344 of title 31 as it relates to the Department of Defense only. The proposed change to section 2637 would extend the D-T-D authorization period for the DoD in certain circumstances.

Section 1344 of title 31 limits the D-T-D period of approval to 15 days, extendable to not more than 90 days, for transportation that is for official purposes including clear and present danger, emergencies, or compelling operational considerations. The D-T-D period of approval is unspecified in current statutory law for home to work transportation that is for field work, intelligence, counterintelligence, protective services or criminal law enforcement duties. As a matter of practice, the Secretary of Defense has approved these types of requests for up to one year. This proposal seeks to set forth the duration of authorization for home to work transportation in these specific cases. In accordance with the proposal, the Secretary of Defense would authorize home-to-work transportation in cases of intelligence, counterintelligence, protective services, and criminal law enforcement duties for a period of up to one year. This proposed statutory amendment would in effect ensure that oversight for DTD authorization is still retained at the highest levels of the Department and also preserves the requirement for Congressional notification.

The Department processes and approves 91 D-T-D authorizations each year based on official purposes for clear and present danger, emergencies, or compelling operational considerations. Of these, 100 percent are renewed every 90 days because of the continual need for D-T-D under these same circumstances. Processing D-T-D requests every 90 days includes an extensive coordination process with multiple organizations and can take up to 60 days prior to the Secretary's signature. This proposal to clearly set forth the period of approval to one year for DTD in these cases would reduce the administrative burden on the Secretary of Defense from having to review and approve repetitive paper work on a quarterly basis, and on other senior DoD officials from the administrative approval process that is currently completed every 90 days.

A clearly specified approval period for all D-T-D authorizations that is set forth in statute would simplify policy and streamline procedures while continuing to ensure that adequate safeguards are in place to prevent abuse. All D-T-D must be approved, in writing, at a level that is not lower than the Service Secretary level. Each approval authority at the Service Secretariat has established procedures to review the continued need for D-T-D authorizations and maintains vehicle logs of D-T-D use. DoD Manual 4500.36, "Acquisition, Management, and Use of DoD Non-Tactical Vehicles," that is the primary DoD policy and procedural guide on home to work transportation sets forth records management and reporting requirements and ensures proper monitoring of D-T-D transportation.

D-T-D transportation is for official purposes, and in accordance with statutory requirements only certain government officials are eligible beneficiaries of D-T-D authorizations. D-T-D authorizations protect users and facilitate the performance of key mission requirements. DoD component missions often require Senior Leader D-T-D authorizations based on threat level assessments and geographic location risks. This proposal will ensure the continued protection of DoD personnel who are in need of home-to-work transportation in order

to accomplish their work that is essential to complete mission requirements. For example, the DoD geographic Combatant Commanders require continuing D-T-D based on compelling operational considerations that include rapid mobility afforded by official vehicles and reliable, instantaneous communications capability installed therein.

Budget Implications: Personnel authorized D-T-D transportation use existing government owned or leased vehicles that are funded within the baseline budget from Operations & Maintenance appropriations. This proposal will not increase funding requirements beyond what is currently supported by the Uniformed Services. The resources reflected in the table below are funded within the FY 2017 President's Budget.

CURRENT RESOURCE REQUIREMENTS ($BILLIONS)								
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Army does not intend to use this funding, which would have been funded from the following account: Operation and Maintenance, Army.								
Navy does not intend to use this funding, which would have been funded from the following account: Operation and Maintenance, Navy.								
Air Force	0.040	0.041	0.042	0.043	0.043	Operation and Maintenance, Air Force	01	011Z
Total	0.040	0.041	0.042	0.043	0.043			

Changes to Existing Law: This proposal would make the following changes to section 2637 of title 10, United States Code:

§ 2637. Transportation in certain areas outside the United States<u>; transportation between residence and place of work</u>

<u>(a) AREAS OUTSIDE THE UNITED STATES.—</u>The Secretary of Defense may authorize the commander of a unified combatant command to use Government owned or leased vehicles to provide transportation in an area outside the United States for members of the uniformed services and Federal civilian employees under the jurisdiction of that commander, and for the dependents of such members and employees, if the commander determines that public or private transportation in such area is unsafe or not available. ~~Such transportation shall be provided in accordance with regulations prescribed by the Secretary of Defense.~~

<u>(b) DOMICILE-TO-DUTY TRANSPORTATION.—In the application of section 1344 of title 31 to the Department of Defense, an authorization made pursuant to subsection (b)(9) of such section, and an extension of such an authorization made pursuant to subsection (d)(2) of such section, may be effective for a period not to exceed one year (notwithstanding the otherwise applicable time periods specified in such section).</u>

<u>(c) REGULATIONS.—Transportation under subsection (a) and the implementation of subsection (b) shall be provided in accordance with regulations prescribed by the Secretary of Defense.</u>

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

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CHAPTER 3—General Power and Functions

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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.

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§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.

Section 1032 would facilitate the ability of the Department of Defense (DoD) to carry out post-isolation support activities on behalf of recovered isolated personnel by expanding the definition of a "recovered person," and would eliminate "(whether as an individual or a group)" language that is unnecessary, as personnel could only be returned alive as an individual or a group.

Post-isolation support is a process that enables the physical and mental healing of recovered personnel following isolation. This process primarily allows DoD to debrief recovered personnel to discover information of tactical, operational, and strategic value, including information concerning the whereabouts of other missing U.S. persons. Second, it allows DoD to collect lessons learned from an isolating event in order to improve education, training, technology, doctrine, and policy to help prevent future isolating events from occurring. The Secretary of Defense has delegated approval for conducting post-isolation support activities to the Secretaries of the Military Departments and geographic Combatant Commanders.

Current law limits the definition of a "recovered person" to U.S. Government, allied, or coalition government personnel, or private U.S. or foreign nationals isolated while participating in a U.S.-sponsored military activity or mission only, and has no provision for designating other individuals without direct ties to the U.S. military or other U.S. Government agencies. This

proposal would expand the definition of a "recovered person" to include other individuals designated by the Secretary of Defense.

The proposed change would benefit DoD by allowing the Department the flexibility to commit resources in support of time-sensitive post-isolation support requests for a broader range of personnel. Requests for support for individuals not currently included in the definition of a "recovered person" must be coordinated via cumbersome inter-departmental requests. It is difficult to process such requests in a timely fashion. Additionally, the proposed change widens the pool of personnel from whom DoD can collect operational information and lessons learned.

Budget Implications: Assuming this authority is exercised twice a year, the cost of the proposal is approximately $100,000 annually. 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	Dash-1 Line Item	Budget Activity	Program Element
Army	.100	.100	.100	.100	.100	Operation and Maintenance, Army	133	01	0202098A
Total	.100	.100	.100	.100	.100				

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

§ 1056a. Reintegration of recovered Department of Defense personnel; post-isolation support activities for other recovered personnel

(a) REINTEGRATION AND SUPPORT AUTHORIZED.—The Secretary of Defense may carry out the following:

(1) Reintegration activities for recovered persons who are Department of Defense personnel.

(2) Post-isolation support activities for or on behalf of other recovered persons who are officers or employees of the United States Government, military or civilian officers or employees of an allied or coalition partner of the United States, or other United States or foreign nationals.

(b) ACTIVITIES AUTHORIZED.—(1) The activities authorized by subsection (a) for or on behalf of a recovered person may include the following:

(A) The provision of food, clothing, necessary medical support, and essential sundry items for the recovered person.

(B) In accordance with regulations prescribed by the Secretary of Defense, travel and transportation allowances for not more than three family members, or other

designated individuals, determined by the commander or head of a military medical treatment facility to be beneficial for the reintegration of the recovered person and whose presence may contribute to improving the physical and mental health of the recovered person.

(C) Transportation or reimbursement for transportation in connection with the attendance of the recovered person at events or functions determined by the commander or head of a military medical treatment facility to contribute to the physical and mental health of the recovered person.

(2) Medical support may be provided under paragraph (1)(A) to a recovered person who is not a member of the armed forces for not more than 20 days.

(c) DEFINITIONS.—In this section:

(1) The term "post-isolation support", in the case of a recovered person, means—

(A) the debriefing of the recovered person following a separation as described in paragraph (2);

(B) activities to promote or support the physical and mental health of the recovered person following such a separation; and

(C) other activities to facilitate return of the recovered person to military or civilian life as expeditiously as possible following such a separation.

(2) The term "recovered person" means an individual who is returned alive from separation **~~(whether as an individual or a group)~~** while participating in or in association with a United States-sponsored military activity or **other United States Government** mission in which the individual was detained in isolation or held in captivity by a hostile entity **or other individual designated by the Secretary of Defense**.

(3) The term "reintegration", in the case of a recovered person, means—

(A) the debriefing of the recovered person following a separation as described in paragraph (2);

(B) activities to promote or support for the physical and mental health of the recovered person following such a separation; and

(C) other activities to facilitate return of the recovered person to military duty or employment with the Department of Defense as expeditiously as possible following such a separation.

Section 1033 would authorize the Department of Defense (DoD) to develop, manage, and execute Non-Conventional Assisted Recovery (NAR) personnel recovery programs for individuals other than the DoD-affiliated personnel for whom such support may be provided under existing law. Eligibility for such support would be as determined by the Secretary. This proposal would also extend the authority to engage in NAR activities through 2021.

The law currently authorizes use of these programs only for DoD and U.S. Coast Guard military and civilian personnel and for other individuals who, while conducting activities in support of United States military operations, become separated or isolated. The amendment proposed by subsection (a) would authorize the Secretary of Defense to provide this support to recover persons who are not part of the DoD or supporting a military activity or mission. The DoD would not act independently to exercise the NAR authority for non-DoD or DoD-supported personnel without appropriate input from the President or Department of State.

The initial authorization contained in section 943 of the Duncan Hunter National Defense Authorization Act for Fiscal Year (FY) 2009 (Public Law 110-417) provided that funds for NAR programs would be available through fiscal year (FY) 2011. In FY 2012, the Department sought to extend NAR authority through 2016; Section 1205 of the NDAA for FY 2012 (Public Law 112-81), extended section 943 only through FY 2013. Section 1241 of the NDAA for FY 2014 (Public Law 113-66) subsequently amended Section 943 to provide funds for NAR activities through FY 2015. Section 943 was further amended by the NDAA for FY 2015 (Public Law 113-291), section 1261, to extend the authority through FY 2016, and again in the NDAA for FY 2016 (Public Law 114-92), section 1271, to extend the authority through FY 2018. The amendment proposed by subsection (b) would authorize funding for NAR activities through FY 2021 to ensure that appropriate NAR capabilities can be maintained.

This personnel recovery program authorizes the use of irregular groups or individuals, including indigenous personnel, tasked with establishing infrastructures and capabilities that would be used to facilitate the recovery of isolated personnel conducting activities globally in support of U.S. military operations. Support to surrogate forces may include the provision of limited amounts of equipment, supplies, training, transportation, other logistical support, or funding.

Budget Implications: 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**
NAR	1.9	2.0	2.1	2.1	2.1	Operation and Maintenance, Defense Wide	01	1CCM	
Total	1.9	2.0	2.1	2.1	2.1				

Changes to Existing Law: This proposal would make the following changes to section 943 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417), as amended:

SEC. 943. AUTHORIZATION OF NON-CONVENTIONAL ASSISTED RECOVERY CAPABILITIES.

(a) NON-CONVENTIONAL ASSISTED RECOVERY CAPABILITIES.—

(1) IN GENERAL.—Upon a determination by a commander of a combatant command that an action is necessary in connection with a non-conventional assisted recovery effort, and with the concurrence of the relevant Chief of Mission or Chiefs of Mission, amounts appropriated or otherwise made available for the Department of

Defense for operation and maintenance may be used to establish, develop, and maintain non-conventional assisted recovery capabilities.

(2) ANNUAL LIMIT.—The total amount made available for support of non-conventional assisted recovery activities under this subsection in any fiscal year may not exceed $25,000,000.

(b) PROCEDURES AND OVERSIGHT.—

(1) PROCEDURES.—The Secretary of Defense shall establish procedures for the exercise of the authority under subsection (a). The Secretary shall notify the congressional defense committees of those procedures before any exercise of that authority.

(2) PROGRAMMATIC AND POLICY OVERSIGHT.—The Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict shall have primary programmatic and policy oversight of non-conventional assisted recovery activities authorized by this section.

(c) AUTHORIZED ACTIVITIES.—Non-conventional assisted recovery capabilities authorized under subsection (a) may, in limited and special circumstances, include the provision of support to entities conducting activities relating to operational preparation of the environment, including foreign forces, irregular forces, groups, or individuals, in order to facilitate the recovery of Department of Defense or Coast Guard military or civilian personnel, or other individuals who, while conducting activities in support of United States military operations, become separated or isolated and cannot rejoin their units without the assistance authorized in subsection (a) **and other individuals as determined by the Secretary of Defense**. Such support may include the provision of limited amounts of equipment, supplies, training, transportation, or other logistical support or funding.

(d) NOTICE TO CONGRESS ON USE OF AUTHORITY.—

(1) NOTICE.—The Secretary of Defense shall notify the congressional defense committees not later than 30 days prior to using the authority in subsection (a) to make funds available for support of non-conventional assisted recovery activities. Any such notice shall be in writing.

(2) CONTENT.—Each notification required under paragraph (1) shall include the following information:

(A) The amount of funds made available for support of non-conventional assisted recovery activities.

(B) A description of the non-conventional assisted recovery activities.

(C) An identification of the type of recipients to receive support for non-conventional assisted recovery activities, including foreign forces, irregular forces, groups, or individuals, as appropriate.

(e) QUARTERLY REPORT.—

(1) REPORT.—The Secretary of Defense shall submit to the relevant congressional defense committees a report on support for non-conventional assisted recovery activities under subsection (a) of this section. Such report shall be included as a part of the classified quarterly report on similar activities.

(2) CONTENTS.—The report shall, with respect to the covered period, include the following information:

(A) The amount of funds obligated for support of non-conventional assisted recovery activities.

(B) A description of the non-conventional assisted recovery activities.

(C) An identification of the type of recipients to receive support for non-conventional assisted recovery activities, including foreign forces, irregular forces, groups, or individuals, as appropriate.

(D) The total amount of funds obligated for support of non-conventional assisted recovery activities, including budget details.

(E) The total amount of funds obligated for support of non-conventional assisted recovery activities in prior fiscal years.

(F) The intended duration of support for support of non-conventional assisted recovery activities.

(G) A description of support or training provided to the recipients of support

(H) A value assessment of the support provided.

(3) COVERED PERIOD.—In this subsection, the term "covered period" means the period with respect to which the classified quarterly report on similar activities applies.

(f) LIMITATION ON INTELLIGENCE ACTIVITIES.—This section does not constitute authority to conduct or support a covert action, as such term is defined in section 503(e) of the National Security Act of 1947 (50 U.S.C. 3093(e)).

(g) LIMITATION ON FOREIGN ASSISTANCE ACTIVITIES.—This section does not constitute authority—

(1) to build the capacity of foreign military forces or provide security and stabilization assistance, as described in section 2282 of title 10, United States Code, and section 1207 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3458), respectively; and

(2) to provide assistance that is otherwise prohibited by any other provision in law, including any provision of law relating to the control of exports of defense articles, defense services, or defense technologies.

(h) PERIOD OF AUTHORITY.—The authority under this section is in effect during each of the fiscal years 2009 through ~~**2018**~~ **2021**.

Section 1034 would add a new section to chapter 663 of title 10, United States Code, to comprehensively protect the listed insignia used by the Department of the Navy, Naval Special Warfare Command, and organizations including Navy SEALs.

The Department of the Navy, Naval Special Warfare Command, and other organizations, including the Navy SEALs, make widespread use of their insignia. All such insignia, in various ways, identify organizations, personnel, operations, and equipment associated with Naval Special Warfare Command and its components. As such, they perform important public functions in identifying an official relationship with the Department of the Navy, Naval Special Warfare

Command and its components. The unauthorized use of the subject insignia has the potential of confusing or misleading the public as to the nature of any connection between the Department of the Navy and its components and the activities of the unauthorized user.

This proposal specifically provides special protection to the Naval Special Warfare Command and its components, because these organizations within the Department of the Navy face a unique and immediate need for such special protection. The operational success of the SEALs throughout their history, and particularly in recent years, has subjected the SEALs to unwanted media and public attention. Numerous commercial entities have attempted to exploit the fame of the SEALs by selling SEALs-branded merchandise and services (which include the identified insignia), and even filing applications with the U.S. Patent and Trademark Office seeking registrations that include the Special Warfare Trident Insignia as well as other Naval Special Warfare Command names and abbreviations. In view of the recent proliferation of unauthorized uses of the insignia of Naval Special Warfare Command and the SEALs, the need for immediate protection is more acute.

Both Federal trademark law and similar State-enacted laws provide exclusivity in, and legal protections for, the use of symbols, words, and phrases that act as trademarks, service marks, and other types of marks. These laws primarily protect marks used "in commerce." While both State governments and Federal agencies may claim ownership rights in trademarks, service marks, collective marks, and other types of marks, the public functions served by governments often vary considerably from traditional commerce. The need to provide protection against misuse of such insignia and names and to guard against confusion is, however, no less important.

Congress has long-recognized the unique challenges of protecting insignia and even the names of United States agencies and departments such as the Coast Guard (14 U.S.C. 639) the Central Intelligence Agency (50 U.S.C. 3513), the National Security Agency (50 U.S.C. 3613), the Defense Intelligence Agency (10 U.S.C. 425), and the National Aeronautics and Space Administration (51 U.S.C. 20141). Existing statutes provide only limited protection for military insignia (10 U.S.C. 771; 18 U.S.C. 701, 712; see also, 32 C.F.R. Part 507), although, in 1984, statutory protection similar to those described above was extended to the "seal, emblem, name, [and] initials of the United States Marine Corps" (10 U.S.C. 7881).

Subsection (a) of the proposal identifies insignia that have originated within, and have acquired special meaning related to, the Department of Navy, Naval Special Warfare Command, its components, and its personnel. A reasonable number of exceptions to this exclusivity would be recognized. The Department of the Navy would retain the ability to use and license all exclusively-owned marks for any use covered by the Lanham Act, 15 U.S.C. 1051, et seq. and its existing authority under 10 U.S.C. 2260 to retain and expend the fees earned from such licensing would remain unchanged.

Subsection (b) would prohibit use of the marks identified in subsection (a) where such use would be likely to suggest a false affiliation, connection or association with, endorsement by, or approval of, the Department of the Navy.

Subsection (c) states explicit exceptions to the prohibition in subsection (b) for commentary and criticism.

Subsection (d) states that an outside party would not be able to use the identified marks merely by disclaiming approval, endorsement, or authorization.

Subsection (e) would assign enforcement responsibilities to the Attorney General.

Subsection (f) would provide that the proposed statute would not limit the ability of the Department of the Navy to seek any all other forms of relief provided under Federal, State, or common law. This subsection would preserve, among other remedies, traditional trademark and anti-counterfeiting claims available to the Department of the Navy.

Budget Implications: This proposal has no budgetary implications. The Department of the Navy already accepts royalties derived from the licensing of Department of the Navy trademarks in accordance with 10 U.S.C. 2260. Pursuant to 10 U.S.C. 2260, trademark royalties are used to pay the costs of operating the Department of the Navy trademark licensing program, which program necessarily includes protection and enforcement of trademarks.

RESOURCE REQUIREMENTS ($MILLIONS)									
		FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Total		0	0	0	0	N/A	N/A	N/A	N/A

Changes to Existing Law: This proposal would add a new section to title 10, United States Code. The proposed new section is set out in full in the legislative text at the beginning of the proposal.

Section 1035, The U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) (hereinafter "Service" individually, and "Services" collectively) are responsible for implementing the Endangered Species Act of 1973. Section 7 of the Endangered Species Act outlines procedures for interagency cooperation to conserve Federally-listed species and designated critical habitats. In order to avoid adverse effects of Federal actions, section 7(a)(2) states that each Federal agency shall, in consultation with the appropriate Secretary, insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. In fulfilling these requirements, each agency must use the best scientific and commercial data available.

The Services have developed a timeline in which consultations are to be completed (135 days from the date the Service accepts the Federal agency's biological assessment); however, this timeline is often exceeded, or consultations are delayed due to limitations on the ability of the Service to devote sufficient resources to the consultations. Additionally, within at least one USFWS region, the Department of the Navy (DON) has been advised that the Service currently lacks the resources to work on more than one Department of Defense (DoD) section 7 consultation at a time, requiring the DoD to prioritize its actions for the Service. Compounding

this problem is the fact that the Service must devote its limited time and attention to other non-DoD federal actions also requiring section 7 consultation. While some circumstances may make it easier to prioritize one DoD action ahead of another, the reality is that the critical nature of many of the DoD actions means that implementation of important actions, including those which support military readiness activities, have been or could be delayed. Some of these delays present an unreasonable risk that DoD will be unable to conduct critical testing and training activities. This presents a particular concern for DoD regarding the rebalancing of U.S. forces in the Pacific Area of Responsibility (AOR). Earlier this year, DoD and USFWS leadership met to discuss a solution; unfortunately, the outcome was agreement that legal constraints significantly limit the ability of the DoD to provide support to the USFWS to complete section 7 consultations on DoD actions so as to avoid adverse impacts on military readiness. USFWS advised DoD, however, that authority granted to the Department of Transportation under section 139 of title 23 of the U.S. Code enables that agency to provides funds directly to the Service to expedite section 7 consultations for its actions.

The ability of DoD to make funds or personnel resources directly to a Service to ensure that the Service can meet a DoD requirement to complete section 7 consultation within a specific time limit is limited under the Economy Act of 1932, as amended, (31 U.S.C. 1535). The Service is subject to significant constraints, including competing section 7 consultations on non-DoD Federal agency actions, which often impact its ability to meet a DoD requirement that a specific section 7 consultation be completed within a certain time limit. These constraints on the Service's ability have placed DoD in the frequent position of having to prioritize its actions for the Service, often with adverse impacts to certain action project schedules.

This proposal would allow for the DoD or a subordinate agency to transfer funds or provide personnel resources to either Service for reasons of national defense to ensure the timely completion of the section 7 consultation process under the Endangered Species Act. The Services will only be able to use the funds to support the section 7 consultation for the DoD action. The total amount of support in a single year is limited to $1 million regardless of the number of section 7 consultations for which the Secretary concerned is providing support. The legislation will allow the DoD to ensure that the Service has the ability to complete section 7 consultation so as to avoid any delay in the overall time limit for the underlying action which could adversely impact national defense. The legislation contains a 5-year sunset provision.

Budget Implications: 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**
Total	1.0	1.0	1.0	1.0	1.0	Operation and Maintenance, Navy	04	4A1M	

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

TITLE XI—CIVILIAN PERSONNEL MATTERS

Section 1101 would enable the Secretary of Defense to include certain civilians who are assigned to the Defense Clandestine Service among the population of the Department of Defense workforce eligible to receive special pay, allowances, and benefits, in addition to basic pay, similar to that provided to employees performing comparable, specialized work.

Among other matters, this proposal would provide authority for the Secretary of Defense to establish a special allowance to help create and maintain a workforce that is more mobile in support of the Defense Intelligence Agency's worldwide mission.

Additional classified justification will be provided separately

Budget Implications: Classified budget display will be provided separately, upon request.

Changes to Existing Law: This proposal would add a new subsection to section 1603 of title 10, United States Code, as follows:

§1603. Additional compensation, incentives, and allowances

(a) ADDITIONAL COMPENSATION BASED ON TITLE 5 AUTHORITIES.—The Secretary of Defense may provide employees in defense intelligence positions compensation (in addition to basic pay), including benefits, incentives, and allowances, consistent with, and not in excess of the level authorized for, comparable positions authorized by title 5.

(b) ALLOWANCES BASED ON LIVING COSTS AND ENVIRONMENT.—(1) In addition to basic pay, employees in defense intelligence positions who are citizens or nationals of the United States and are stationed outside the continental United States or in Alaska may be paid an allowance, in accordance with regulations prescribed by the Secretary of Defense, while they are so stationed.

(2) An allowance under this subsection shall be based on—

(A) living costs substantially higher than in the District of Columbia;

(B) conditions of environment which (i) differ substantially from conditions of environment in the continental United States, and (ii) warrant an allowance as a recruitment incentive; or

(C) both of the factors specified in subparagraphs (A) and (B).

(3) An allowance under this subsection may not exceed the allowance authorized to be paid by section 5941(a) of title 5 for employees whose rates of basic pay are fixed by statute.

(c) ADDITIONAL ALLOWANCES AND BENEFITS FOR EMPLOYEES OF THE DEFENSE CLANDESTINE SERVICE.—In addition to the authority to provide compensation under subsection (a), the Secretary of Defense may provide an employee in a defense intelligence position who is assigned to the Defense Clandestine Service allowances and benefits under paragraph (1) of section 9904 without regard to the limitations in that section—

(1) that the employees be assigned to activities outside the United States; or

(2) that the activities to which the employee is assigned be in support of Department of Defense activities abroad.

For the information of the reader, section 9904 of title 5, United States Code, appears as follows:

§9904. Special pay and benefits for certain employees outside the United States

The Secretary may provide to certain civilian employees of the Department of Defense assigned to activities outside the United States as determined by the Secretary to be in support of Department of Defense activities abroad hazardous to life or health or so specialized because of security requirements as to be clearly distinguishable from normal Government employment—

(1) allowances and benefits—

(A) comparable to those provided by the Secretary of State to members of the Foreign Service under chapter 9 of title I of the Foreign Service Act of 1980 (Public Law 96–465, 22 U.S.C. 4081 et seq.) or any other provision of law; or

(B) comparable to those provided by the Director of Central Intelligence to personnel of the Central Intelligence Agency; and

(2) special retirement accrual benefits and disability in the same manner provided for by the Central Intelligence Agency Retirement Act (50 U.S.C. 2001 et seq.) and in section 18 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403r).

Section 1102 would extend through fiscal year (FY) 2018 the discretionary authority of the head of an agency to provide to an individual employed by, or assigned or detailed to, such agency, allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980, if such individual is on official duty in Pakistan or a combat zone (as defined by section 112(c) of the Internal Revenue Code of 1986).

This authority has been granted since 2006 to provide certain allowances, benefits, and gratuities to individuals on official duty in Pakistan or a combat zone. The extension of the authority would ensure employees receive benefits promptly and for the periods of time when the conditions warrant the designation of a combat zone. This is a provision that applies to all Federal agencies, not just the Department of Defense (DoD), and is necessary to incentivize and support all Federal civilian employees taking assignments in Pakistan or a conflict zone.

Budget Implications: The costing methodology for this legislative proposal is based on the number of DoD civilian employees currently deployed to Pakistan or a combat zone, times the cost associated with each allowance, benefit, and gratuity under section 413 and chapter 9 of title I of the Foreign Service Act (22 U.S.C. 3979; and 4081 et seq.) (i.e., death gratuity equal to EX-II ($185,100 in 2016); payment of commercial roundtrip travel for Rest and Recuperation (R&R) breaks (up to three per year for employees deployed for 12 consecutive months and home leave; and administrative leave for R&R travel). Specifically, the total cost for the death gratuity is calculated based on the assumption that there is one civilian death per Service during the two year period. This cost is added to FY 2017. Payment of commercial roundtrip travel for R&R is based on the

estimated number of currently deployed civilians who will remain deployed for 12 consecutive months, and thus entitled to up to three R&R breaks and home leave. Estimates of the number of employees are: Army – 1,770; Navy – 215; Air Force – 168; Defense Wide – 239. The average cost for each roundtrip travel for R&R is $18,000. The resources reflected in the table below are funded within the FY17 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**
Army	$39.00	$0	$0	$0	$0	Operation and Maintenance, Army OCO	01	121/136	
Navy	$4.05	$0	$0	$0	$0	Operation and Maintenance, Navy OCO	01	OCO-CIVPAY	
Air Force	$3.21	$0	$0	$0	$0	Operation and Maintenance, Air Force OCO	01	OCO-CIVPAY	
Defense Wide	$4.48	$0	$0	$0	$0	Operation and Maintenance, Defense-Wide OCO	03	OCO-CIVPAY	
Total	$50.74								

NUMBER OF PERSONNEL AFFECTED									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	1,770	0	0	0	0	Operation and Maintenance, Army OCO	01	121/136	
Navy	215	0	0	0	0	Operation and Maintenance, Navy OCO	01	OCO-CIVPAY	
Air Force	168	0	0	0	0	Operation and Maintenance, Air Force OCO	01	OCO-CIVPAY	
Defense Wide	239	0	0	0	0	Operation and Maintenance, Defense-Wide OCO	03	OCO-CIVPAY	
Total	2,392								

Changes to Existing Law: This proposal would make the following change to section 1603 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234; 120 Stat. 443):

SEC. 1603. (a) IN GENERAL.—(1) During fiscal years 2006 (including the period beginning on October 1, 2005, and ending on June 15, 2006), 2007, and 2008 the head of an agency may, in the agency head's discretion, provide to an individual employed by, or assigned or detailed to, such agency allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3973; 4081 et seq.), if such individual is on official duty in Iraq or Afghanistan.

(2) During fiscal years 2009 through ~~2017~~ **2018,** the head of an agency may, in the agency head's discretion, provide to an individual employed by, or assigned or detailed to, such agency allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980, if such individual is on official duty in Pakistan or a combat zone (as defined by section 112(c) of the Internal Revenue Code of 1986).

(b) CONSTRUCTION.—Nothing in this section shall be construed to impair or otherwise affect the authority of the head of an agency under any other provision of law.

(c) APPLICABILITY OF CERTAIN AUTHORITIES.—Section 912(a) of the Internal Revenue Code of 1986 shall apply with respect to amounts received as allowances or otherwise under this section in the same manner as section 912 of the Internal Revenue Code of 1986 applies with respect to amounts received by members of the Foreign Service as allowances or otherwise under chapter 9 of title I of the Foreign Service Act of 1980.

Section 1103 has been a recurring provision for the last several years and is an extension for two additional years of the authority under section 1101 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009, as amended by subsequent NDAAs, most recently section 1108 of the FY 2016 NDAA. The provision is currently in effect through calendar year 2016. The authority under that section is similar to that previously provided in the NDAAs since FY 2006.

This proposal would provide the head of a Federal executive agency with the authority to waive the limitations on the amount of premium pay that may be paid to a Federal civilian employee while the employee performs work in in an overseas location that is in the area of responsibility (AOR) of the Commander of the United States Central Command (USCENTCOM) or an overseas location formerly in the area of responsibility of the Commander, USCENTCOM AOR but has been moved to the AOR of the Commander, United States Africa Command, and is in direct support of, or directly related to, a military operation or an operation in response to a national emergency as declared by the President. Under the law generally applicable to premium pay for Federal civilian employees (section 5547 of title 5, United States Code (U.S.C.)), premium pay may be paid to an employee only to the extent that the payment does not cause the aggregate of basic pay and premium pay for any pay period to

exceed the greater of the maximum rate of basic pay payable for General Schedule-15 (GS-15), as adjusted for locality, or the rate payable for Level V of the Executive Schedule.

Extending the authority under section 1101(a) of the FY 2009 NDAA would allow a Federal agency head, during calendar year 2017 and 2018, to waive the limitations in section 5547 and pay premium pay to a Federal civilian employee performing work in an overseas location, as described above, to the extent that the payment does not cause the aggregate of basic pay and premium pay to exceed the annual rate of salary payable to the Vice President under section 104 of title 3, U.S.C., in a calendar year.

Budget Implications: The Department of Defense estimates this proposal would cost $2.647 million for FY 2017 and $2.702 million for FY 2018. This proposal would be funded from the Component and Defense Activity operation and maintenance fund accounts.

The limitation relief is for those people who are deployed with regard to the Overseas Contingency Operations (OCO) in Iraq and Afghanistan. The funding is requested in the military departments' Operation and Maintenance OCO budgets by cost breakdown structure category. The number of personnel affected in FY 2014 was 2,760. The number of affected personnel Defense-wide in FY 2017 and FY 2018 is estimated to be the same. 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**
Army	$1.960	$2.000				Operation and Maintenance, Army OCO	01	OCO-Civ Pay
Navy	$0.159	$0.162				Operation and Maintenance, Navy OCO	01	OCO-Civ Pay
USMC	$0.079	$0.081				Operation and Maintenance, Marine Corps OCO	01	OCO-Civ Pay
Air Force	$0.185	$0.189				Operation and Maintenance, Air Force OCO	01	OCO-Civ Pay
Defense Wide	$0.264	$0.270				Operation and Maintenance, Defense-Wide OCO	03	OCO-Civ Pay
Total	$2.647	$2.702					-	-

Cost Methodology: The cost of this proposal will be determined by the number of employees affected, the basic pay of each employee (which varies by grade, step, and location), and the

number of hours of overtime worked by each employee. Based on available payroll data for eligible employees in 2014 the additional cost for overtime in excess of the annual premium pay limitation was approximately $2.3 million. The actual numbers of employees, their salaries, and the length of time additional overtime might be required are based on mission needs in FY 2017 and FY 2018, but the above scenario illustrates the potential impact.

Changes to Existing Law: This proposal would amend section 1101(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4615), as amended, as follows:

SEC. 1101. AUTHORITY TO WAIVE ANNUAL LIMITATION ON PREMIUM PAY AND AGGREGATE LIMITATION ON PAY FOR FEDERAL CIVILIAN EMPLOYEES WORKING OVERSEAS.

(a) WAIVER AUTHORITY.—During calendar years 2009 through ~~2016~~ 2018, and notwithstanding section 5547 of title 5, United States Code, the head of an Executive agency may waive the premium pay limitations established in that section up to the annual rate of salary payable to the Vice President under section 104 of title 3, United States Code, for an employee who performs work while in an overseas location that is in the area of responsibility of the Commander of the United States Central Command, or an overseas location that was formerly in the area of responsibility of the Commander of the United States Central Command but has been moved to the area of responsibility of the Commander of the United States Africa Command, in direct support of, or directly related to—

(1) a military operation, including a contingency operation; or

(2) an operation in response to a national emergency declared by the President.

(b) APPLICABILITY OF AGGREGATE LIMITATION ON PAY. — Section 5307 of title 5, United States Code, shall not apply to any employee in any calendar year in which that employee is granted a waiver under subsection (a).

* * * * *

Section 1104, the objective of advanced pay for relocation is to help defray up-front, out-of-pocket expenses for current employees who are moving between duty stations (i.e., making a geographical move). This proposal would modify section 5524a of title 5, United States Code (U.S.C.), which currently authorizes the use of advance payment of basic pay for new hires, to also authorize advance payment of basic pay for current employees who relocate within the United States and its territories to a location outside the employee's current commuting area. Similar provisions exist that authorize the use of advance pay for relocating military members (37 U.S.C. 1006), and for civilians relocating to a foreign area (5 U.S.C. 5927).

The National Defense Authorization Act for Fiscal Year (FY) 2010 required the Department to develop a new performance appraisal system, redesign procedures for use within DoD to make appointments to positions within the competitive service, and authorized the

Secretary of Defense, at his discretion, to establish a Civilian Workforce Incentive Fund. In accordance with Executive Order (E.O.) 13522, DoD involved bargaining unit employees through their union representatives in the design and implementation of the new personnel authorities. This collaborative labor-management initiative came to be known as "New Beginnings", and involved the creation of three joint labor-management design teams. The Civilian Workforce Incentive Fund Design Team recommended that DoD authorize advance pay for current employees with particular or superior qualifications or skills who are relocating within the United States or its territories.

Advancement of pay is fiscally responsible because the agency recoups the advanced pay from the employee. The program would be administered like the existing program for civilians assigned to foreign areas – repayment of the advanced pay will occur over 26 pay periods by automatic payroll deduction. This option would likely encourage employees faced with a decision to accept an offer that requires the employee to relocate. It is most beneficial for moves to high cost-of-living locations and is of low cost to the government since it only involves the cost of administration, loss of interest income on the pay advanced to employees, and unlikely waiver of overpayment for failure to repay the advance. The use of such an authority may be used to entice candidates to relocate when restricted budgets inhibit the use of relocation incentives, or it can supplement a relocation incentive.

DoD may establish written policy and criteria to implement this provision. As an example, policy may include that advanced pay can be used to facilitate strategic workforce plans that rely on the movement of employees who possess certain knowledge and/or particular skills, such as those required to perform highly specialized work or are within a specific set of competencies required by officially identified DoD Mission Critical Occupations (MCO).

Budget Implications: Since procedures are already in place for advanced pay to civilians relocating to foreign areas and for new appointees, those procedures can be easily extended to employees covered by this proposal. Advanced pay is not additional pay. Rather, it is future pay provided at an earlier date. The employee receiving advanced pay would have a reduced salary over the course of the 26 pay periods following the entered-on-duty date as the advance is repaid. Nevertheless, resource requirements for the advanced pay are provided in the table below. The resources reflected in the table below are funded within the FY 2017 President's Budget.

RESOURCE REQUIREMENTS ($M)								
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Air Force	1.2	1.2	1.2	1.2	1.2	Operation and Maintenance, Air Force	01	011Z
Air Force	.26	.26	.26	.26	.26	Operation and Maintenance, Air Force	02	021Z
Air Force	.43	.43	.43	.43	.43	Operation and Maintenance, Air Force	03	031Z

Air Force	1.42	1.42	1.42	1.42	1.42	Operation and Maintenance, Air Force	04	041B
Army	2.6	3.1	3.7	4.2	4.9	Operation and Maintenance, Army	01	115, 121, 122, 131, 132, 133
Army	0.8	0.9	1.0	1.2	1.4	Operation and Maintenance, Army	03	314, 321, 324, 331, 332, 334
Army	1.1	1.3	1.5	1.7	2.0	Operation and Maintenance, Army	04	411, 422, 423, 424, 431, 432, 433, 434, 435
Navy does not intend to use the authority, which was to be funded in the following account: Operation and Maintenance, Navy. Marine Corps does not intend to use the authority, which was to be funded in the following account: Operation and Maintenance, Marine Corps.								
Total	7.81	8.61	9.51	10.41	11.61			

NUMBER OF PERSONNEL AFFECTED

	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Appropriation From	Budget Activity	Dash-1 Line Item
Air Force	40	40	40	40	40	Operation and Maintenance, Air Force	01	011Z
Air Force	9	9	9	9	9	Operation and Maintenance, Air Force	02	021Z
Air Force	14	14	14	14	14	Operation and Maintenance, Air Force	03	031Z
Air Force	47	47	47	47	47	Operation and Maintenance, Air Force	04	041B
Army	81	83	84	84	84	Operation and Maintenance, Army	01	115, 121, 122, 131, 132, 133
Army	24	24	24	24	24	Operation and Maintenance, Army	03	314, 321, 324, 331, 332, 334
Army	34	34	34	33	34	Operation and Maintenance, Army	04	411, 422, 423, 424, 431, 432, 433, 434, 435
Navy does not intend to use the authority, which was to be funded in the following account: Operation and Maintenance, Navy. Marine Corps does not intend to use the authority, which was								

to be funded in the following account: Operation and Maintenance, Marine Corps.								
Total	200	202	203	202	203			

Changes to Existing Law: This proposal would make the following changes to section 5524a of title 5 United States Code:

§ 5524a. Advance payments for new appointees <u>or current employees relocating within the United States and its territories</u>

(a)<u>(1)</u> The head of each agency may provide for the advance payment of basic pay, covering not more than 2 pay periods, to any individual who is newly appointed to a position in the agency.

<u>(2) The head of each agency may provide for the advance payment of basic pay, covering not more than 6 pay periods, to an employee who is assigned to a position in the agency that is located—</u>

<u>(A) outside of the employee's current commuting area; and</u>

<u>(B) in an area not covered by section 5927.</u>

(b)(1) Subject to adjustment of the account of an employee under paragraph (2) and other applicable statutes, the advance payment of basic pay shall be made, under agency procedures governing advance payments under this section, at the initial rate of basic pay to be payable to the employee upon the commencement of service in the position to which appointed <u>or assigned</u>.

(2) The head of each agency shall provide for—

(A) the review of the account of each employee of the agency in receipt of any payment under this section; and

(B) the adjustment of the amount of any such payment on the basis of the rate of basic pay to which the employee would have been entitled under applicable statute other than this section for the respective periods covered by the payments, if the employee had performed active service under the terms of such employee's appointment <u>or assignment</u> during each period in the position to which appointed <u>or assigned</u>.

(c) An advance payment under this section is recoverable by the Government of the United States or the government of the District of Columbia, as the case may be, from the employee or such employee's estate by—

(1) setoff against accrued pay, amount of retirement credit, or other amount due to the employee from the Government of the United States or the government of the District of Columbia; and

(2) such other method as is provided by law.

The head of the agency concerned may waive in whole or in part a right of recovery of an advance payment under this section if it is shown that the recovery would be against equity and good conscience or against the public interest.

Section 1105 would amend sections 3523(b)(3)(B) and 9902(f)(5)(A)(ii) of title 5, United States Code, by increasing the maximum amount of separation pay authorized for Voluntary Separation Incentive Pay (VSIP) from the current ceiling of $25,000 to $40,000. This increased

maximum amount would adjust for inflation from when VSIP was first authorized for the Department of Defense (DoD) 1993. The Chief Human Capital Officers Act of 2002 (Public Law 107-296) provided government-wide authority to provide VSIP. The maximum payable amount has not been adjusted since VSIP was first authorized.

The government-wide VSIP authority under 5 U.S.C. 3521-3525 allows agencies to seek approval from the U.S. Office of Personnel Management to offer lump-sum payments to employees who are in surplus positions or have skills that are no longer needed in the workforce, as an incentive to separate. Under the current authority, agencies may pay up to $25,000, or an amount equal to the amount of severance pay an employee would be entitled to receive, whichever is less. Employees may separate to accept VSIP by resignation, optional retirement, or by voluntary early retirement, if authorized. VSIP are an option for increasing voluntary attrition in agencies that are downsizing or restructuring.

The National Defense Authorization Act for Fiscal Year (FY) 2010 required the DoD to develop a new performance appraisal system, redesign procedures for use within DoD to make appointments to positions within the competitive service, and authorized the Secretary of Defense, at his discretion, to establish a Civilian Workforce Incentive Fund. The NDAA for 2010 required DoD to provide a means for ensuring employee involvement (for bargaining unit employees, through their exclusive representatives) in the design and implementation such new system. The process by which the initiatives to develop the new authorities unfolded came to be known as "New Beginnings." One recommendation, made with union input, was that DoD increase the VSIP cap from the current $25,000 to a maximum of $40,000.

The Department of Defense has traditionally offered incentives to encourage voluntary separations as one means to minimize the impact of workforce restructuring and reductions. Without sufficient voluntary separations when faced with the need for workforce restructuring or reductions, the Department may impact more employees through reductions in force (RIF). RIFs are costly and disruptive to the mission and create negative morale in the workforce. The recent announcements of anticipated reductions to the DoD budget over the next few years require management to efficiently reduce the workforce while not adversely affecting the mission and the Department's commitment to support our warfighters. Buyouts provide a less expensive, more humane, and more manageable way to efficiently reduce and restructure the workforce.

The maximum amount payable under VSIP has not changed since the Department of Defense was first authorized to offer voluntary separation incentives in 1993. In the meantime, the buying power of a dollar has decreased dramatically. Based on the Consumer Price Index (CPI) as calculated by the Bureau of Labor Statistics, the rate of inflation from 1993 to 2013 was 89 percent. During the same period, General Schedule salaries increased by 71 percent. While $25,000 was considered an appropriate amount to induce employees to voluntarily separate in 1993, it cannot possibly provide the same incentive in current dollars. Employees are clearly influenced by prevailing economic conditions when making financial decisions. The VSIP amount should have increased to $47,250 to keep pace with inflation, or to $42,750 to mirror the GS salary increase. The proposed figure is rounded down from the lesser amount.

RESOURCE REQUIREMENTS ($MILLIONS)

	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Army	175	175	175	175	175	Operation and Maintenance, Army	BA1, 2, 3, 4	Multiple	
Navy	1.70	1.72	1.74	1.78	1.83	Operation and Maintenance, Navy	BA1	N/A	
Navy	10.41	10.60	10.79	10.98	11.18	Navy Working Capital Fund	BA1	N/A	
Navy	.52	.54	.56	.56	.58	Research, Development, Test & Evaluation, Navy	BA1	N/A	
Air Force	47.50	47.50	47.50	47.50	47.50	Operation and Maintenance, Air Force	BA1	N/A	
USMC	.49	.51	.51	.52	.52	Operation and Maintenance, Marine Corps	BA1	N/A	
Total	235.62	235.87	236.10	236.34	236.61				

Budget Implications: Adoption of the proposal would increase the maximum VSIP amount from $25,000 to a maximum of $40,000. It will not change the severance pay formulas used to calculate the actual VSIP amount.

NUMBER OF PERSONNEL AFFECTED									
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Army	4366	4366	4366	4366	4366	Operation and Maintenance, Army	BA1, 2, 3, 4	Multiple	
Navy	42	43	43	45	45	Operation and Maintenance, Navy	BA1	N/A	
Navy	260	265	272	274	279	Navy Working Capital Fund	BA1	N/A	
Navy	14	14	14	14	14	Research,	BA1	N/A	

						Development, Test, and Evaluation, Navy			
Air Force	1187	1187	1187	1187	1187	Operation and Maintenance, Air Force	BA1	N/A	
USMC	12	12	12	12	12	Operation and Maintenance, Marine Corps	BA1	N/A	
Total	5881	5887	5894	5898	5903				

Cost Methodology: The Department anticipates significant use of VSIP in the foreseeable future as civilian workforce levels drop in response to announced and forecasted reductions in funding, and as the need for reshaping the workforce continues. VSIP is used to encourage voluntary reductions that mitigate adverse effects on civilian employees and are less costly to the Department than involuntary reductions via RIF. The resource requirements listed reflect the total cost of buyouts over the fiscal year development plan, taking into account the number of employees that historically participated in VSIP as well as Component projections of how many additional employees are expected to take VSIP at the increased amount. It assumes a nearly a straight-line increase of $15,000 per buyout since historically 99 percent of the buyouts approved are at the maximum amount of $25,000. This extra expenditure will be absorbed by reducing the costs associated with RIF, including severance pay, unemployment compensation, continuation of benefits, transition assistance, and various administrative costs.

Changes to Existing Law: This proposal would make the following changes to title 5, United States Code:

§ 3523. Authority to provide voluntary separation incentive payments

(a) A voluntary separation incentive payment under this subchapter may be paid to an employee only as provided in the plan of an agency established under section 3522.

(b) A voluntary incentive payment—
(1) shall be offered to agency employees on the basis of—
(A) 1 or more organizational units;
(B) 1 or more occupational series or levels;
(C) 1 or more geographical locations;
(D) skills, knowledge, or other factors related to a position;
(E) specific periods of time during which eligible employees may elect a voluntary incentive payment; or
(F) any appropriate combination of factors;
(2) shall be paid in a lump sum after the employee's separation;
(3) shall be equal to the lesser of—
(A) an amount equal to the amount the employee would be entitled to receive

under section 5595(c) if the employee were entitled to payment under such section (without adjustment for any previous payment made); or

(B) an amount determined by the agency head, not to exceed ~~**$25,000**~~ **$40,000**;

(4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;

(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on another other separation; and

(7) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

*** * * * * ***

§ 9902. Department of Defense personnel authorities

(a) ***

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(f) PROVISIONS RELATED TO SEPARATION AND RETIREMENT INCENTIVES.—

(1) The Secretary may establish a program within the Department of Defense under which employees may be eligible for early retirement, offered separation incentive pay to separate from service voluntarily, or both. This authority may be used to reduce the number of personnel employed by the Department of Defense or to restructure the workforce to meet mission objectives without reducing the overall number of personnel. This authority is in addition to, and notwithstanding, any other authorities established by law or regulation for such programs.

(2)(A) The Secretary may not authorize the payment of voluntary separation incentive pay under paragraph (1) to more than 25,000 employees in any fiscal year, except that employees who receive voluntary separation incentive pay as a result of a closure or realignment of a military installation under the Defense Base Closure and Realignment Act of 1990 (title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) shall not be included in that number.

(B) The Secretary shall prepare a report each fiscal year setting forth the number of employees who received such pay as a result of a closure or realignment of a military base as described under subparagraph (A).

(C) The Secretary shall submit the report under subparagraph (B) to the Committee on Armed Services and the Committee on Governmental Affairs of the Senate, and the Committee on Armed Services and the Committee on Government Reform of the House of Representatives.

(3) For purposes of this section, the term "employee" means an employee of the Department of Defense, serving under an appointment without time limitation, except that such term does not include—

(A) a reemployed annuitant under subchapter III of chapter 83 or chapter 84, or another retirement system for employees of the Federal Government;

(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under any of the retirement systems referred to in subparagraph (A); or

(C) for purposes of eligibility for separation incentives under this section, an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance.

(4) An employee who is at least 50 years of age and has completed 20 years of service, or has at least 25 years of service, may, pursuant to regulations promulgated under this section, apply and be retired from the Department of Defense and receive benefits in accordance with chapter 83 or 84 if the employee has been employed continuously within the Department of Defense for more than 30 days before the date on which the determination to conduct a reduction or restructuring within 1 or more Department of Defense components is approved.

(5)(A) Separation pay shall be paid in a lump sum or in installments and may be equal to the lesser of—

(i) an amount equal to the amount the employee would be entitled to receive under section 5595 (c), if the employee were entitled to payment under such section; or

(ii) ~~$25,000~~ an amount determined by the Secretary, not to exceed $40,000.

(B) Separation pay shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit. Separation pay shall not be taken into account for the purpose of determining the amount of any severance pay to which an individual may be entitled under section 5595, based on any other separation.

(C) Separation pay, if paid in installments, shall cease to be paid upon the recipient's acceptance of employment by the Federal Government, or commencement of work under a personal services contract as described in paragraph (6).

(6)(A) An employee who receives separation pay under such program may not be reemployed by the Department of Defense for a 12-month period beginning on the effective date of the employee's separation, unless this prohibition is waived by the Secretary on a case-by-case basis.

(B) An employee who receives separation pay under this section on the basis of a separation occurring on or after the date of the enactment of the Federal Workforce Restructuring Act of 1994 (Public Law 103–226; 108 Stat. 111) and accepts employment with the Government of the United States, or who commences work through a personal services contract with the United States within 5 years after the date of the separation on which payment of the separation pay is based, shall be required to repay the entire amount of the separation pay to the Department of Defense. If the employment is with an Executive agency (as defined by section 105) other than the Department of Defense, the Director may, at the request of the head of that agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is within the Department of Defense, the Secretary may waive the repayment if the individual involved is the only qualified applicant available for the position. If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the

position. If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(7) Under this program, early retirement and separation pay may be offered only pursuant to regulations established by the Secretary, subject to such limitations or conditions as the Secretary may require.

(g) ***

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Section 1106, eliminate the "Rule of Three" and give agencies authority to define the number of candidates to be considered, using a cut-off score or similar mechanism. The revision would not change veteran's preference – veterans would still be granted preference points and would continue to be entitled to selection preference over a non-veteran candidate with the same or lower score. Agencies would also continue to be authorized to use "Category Rating" at their discretion, instead of straight numerically-based scoring.

Budgetary Implications: OPM does not believe this proposal has any significant government-wide cost implications. A budget table is inapplicable and has not been provided.

Changes to Existing Law: This proposal would strike sections 3317 and 3318 of title 5, United States Code, and insert new sections 3317 and 3318, the full text of which is contained in the legislative language above. In addition, the proposal would make the following changes to title 5, United States Code.

~~**§ 3317. Competitive service; certification from registers**~~

~~(a) The Office of Personnel Management shall certify enough names from the top of the appropriate register to permit a nominating or appointing authority who has requested a certificate of eligibles to consider at least three names for appointment to each vacancy in the competitive service.~~

~~(b) When an appointing authority, for reasons considered sufficient by the Office, has three times considered and passed over a preference eligible who was certified from a register, certification of the preference eligible for appointment may be discontinued. However, the preference eligible is entitled to advance notice of discontinuance of certification.~~

~~§ 3318. Competitive service; selection from certificates~~

~~(a) The nominating or appointing authority shall select for appointment to each vacancy from the highest three eligibles available for appointment on the certificate furnished under section 3317(a) of this title, unless objection to one or more of the individuals certified is made to, and sustained by, the Office of Personnel Management for proper and adequate reason under regulations prescribed by the Office.~~

~~(b)(1) If an appointing authority proposes to pass over a preference eligible on a certificate in order to select an individual who is not a preference eligible, such authority shall~~

~~file written reasons with the Office for passing over the preference eligible. The Office shall make the reasons presented by the appointing authority part of the record of the preference eligible and may require the submission of more detailed information from the appointing authority in support of the passing over of the preference eligible. The Office shall determine the sufficiency or insufficiency of the reasons submitted by the appointing authority, taking into account any response received from the preference eligible under paragraph (2) of this subsection. When the Office has completed its review of the proposed passover, it shall send its findings to the appointing authority and to the preference eligible. The appointing authority shall comply with the findings of the Office.~~

~~(2) In the case of a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more, the appointing authority shall at the same time it notifies the Office under paragraph (1) of this subsection, notify the preference eligible of the proposed passover, of the reasons therefor, and of his right to respond to such reasons to the Office within 15 days of the date of such notification. The Office shall, before completing its review under paragraph (1) of this subsection, require a demonstration by the appointing authority that the passover notification was timely sent to the preference eligible's last known address.~~

~~(3) A preference eligible not described in paragraph (2) of this subsection, or his representative, shall be entitled, on request, to a copy of~~

~~(A) the reasons submitted by the appointing authority in support of the proposed passover, and~~

~~(B) the findings of the Office.~~

~~(4) In the case of a preference eligible described in paragraph (2) of this subsection, the functions of the Office under this subsection may not be delegated.~~

~~(c) When three or more names of preference eligibles are on a reemployment list appropriate for the position to be filled, a nominating or appointing authority may appoint from a register of eligibles established after examination only an individual who qualifies as a preference eligible under section 2108(3)(C)–(G) of this title.~~

§ 3319. ~~Alternative ranking and selection procedures~~ Competitive service; selection using category rating

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§ 3320. Excepted service; government of the District of Columbia; selection

The nominating or appointing authority shall select for appointment to each vacancy in the excepted service in the executive branch and in the government of the District of Columbia from the qualified applicants in the same manner and under the same conditions required for the competitive service by sections ~~3308–3318~~ 3308–3319 of this title. This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate.

Section 1107 would modify statutory provisions to exempt certain "non-permanent/non-career" appointments from public notice requirements. This proposal will allow Federal agencies to develop more strategic outreach efforts to recruit the talent needed to address a

critical hiring need. Agencies would determine recruitment sources, including processes for the solicitation of applications, and agencies would still be held responsible for merit-based hiring decisions, consistent with other employment requirements.

Budgetary Implications: OPM does not believe this proposal has any significant Government-wide cost implications. A budget table is inapplicable and has not been provided.

Changes to Existing Law: This proposal would insert new sections 3115 and 3116 in subchapter I of chapter 31 of title 5, United States Code, the full text of which is shown above in the legislative language.

Section 1108 is a legislative change to, first, adverse action procedural requirements to clarify that the term "written notice" does not import any heightened pleading requirements and instead means providing sufficient information so that the employee may reasonably understand the action or failure to act that is the basis for the proposed action. This will simplify adverse action "written notice" requirements reducing the time burden in drafting notices and reduce technical reversals of actions taken for employee misconduct. Second, judicial review would be available to challenge FLRA decisions on arbitral awards that are contrary to law – not arbitral fact findings or mere contract interpretation. Last, it would restore unity of review in MSPB, with no option for grievance arbitration on matters covered under sections 4303 and 7512 that would otherwise be appealable to the MSPB.

Budgetary Implications: OPM does not believe this proposal has any significant governmentwide cost implications. A budget table is inapplicable and has not been provided.

Changes to Existing Law: This proposal would make the following changes to title 5, United States Code:

§7513. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

(b) An employee against whom an action is proposed is entitled to-

(1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action, including the factual basis for the proposed action with sufficient clarity to reasonably inform the employee of the charge under the circumstances;

(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and the specific reasons therefor at the earliest practicable date.

* * * * *

§7543. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(b) An employee against whom an action covered by this subchapter is proposed is entitled to-

(1) at least 30 days' advance written notice, unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, stating specific reasons for the proposed action, including the factual basis for the proposed action with sufficient clarity to reasonably inform the employee of the charge under the circumstances;

(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and specific reasons therefor at the earliest practicable date.

* * * * *

§7701. Appellate procedures

(a) An employee, or applicant for employment, may submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board under any law, rule, or regulation. An appellant shall have the right-

(1) to a hearing for which a transcript will be kept; and

(2) to be represented by an attorney or other representative.

Appeals shall be processed in accordance with regulations prescribed by the Board.

(b)(1) The Board may hear any case appealed to it or may refer the case to an administrative law judge appointed under section 3105 of this title or other employee of the Board designated by the Board to hear such cases, except that in any case involving a removal from the service, the case shall be heard by the Board, an employee experienced in hearing appeals, or an administrative law judge. The Board, administrative law judge, or other employee (as the case may be) shall make a decision after receipt of the written representations of the parties to the appeal and after opportunity for a hearing under subsection (a)(1) of this section. A copy of the decision shall be furnished to each party to the appeal and to the Office of Personnel Management.

(2)(A) If an employee or applicant for employment is the prevailing party in an appeal under this subsection, the employee or applicant shall be granted the relief provided in the decision effective upon the making of the decision, and remaining in effect pending the outcome of any petition for review under subsection (e), unless-

(i) the deciding official determines that the granting of such relief is not appropriate; or

(ii)(I) the relief granted in the decision provides that such employee or applicant shall return or be present at the place of employment during the period pending the outcome of any petition for review under subsection (e); and

(II) the employing agency, subject to the provisions of subparagraph (B), determines that the return or presence of such employee or applicant is unduly disruptive to the work environment.

(B) If an agency makes a determination under subparagraph (A)(ii)(II) that prevents the return or presence of an employee at the place of employment, such employee shall receive pay, compensation, and all other benefits as terms and conditions of employment during the period pending the outcome of any petition for review under subsection (e).

(C) Nothing in the provisions of this paragraph may be construed to require any award of back pay or attorney fees be paid before the decision is final.

(3) With respect to an appeal from an adverse action covered by subchapter II or V of chapter 75, the Board shall—

(A) review whether the agency has proved the factual specifications of the charge in light of the circumstances;

(B) in the case of an adverse action covered by subchapter II of such chapter, review whether the proposed adverse action is for such cause as will promote the efficiency of the service;

(C) in the case of an adverse action covered by subchapter V of such chapter, review whether the proposed adverse action is for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function; and

(D) not infer any elements of proof from the title, caption, or label of the charge.

(4) An adverse action shall not be overturned or modified due to insufficiency of the charge if the factual basis for the proposed adverse action is stated with sufficient clarity so that the employee knew or reasonably should have known what the charge is.

(5) An action under section 4303 shall not be overturned because of the wording of a performance standard if the employee has been placed on notice in the performance standards or by other means during the applicable minimal appraisal period, including an opportunity period, of the performance necessary to demonstrate acceptable performance, such that the employee knew or reasonably should have known the performance necessary to demonstrate acceptable performance.

(~~3~~6) With respect to an appeal from an adverse action covered by subchapter V of chapter 75, authority to mitigate the personnel action involved shall be available, subject to the same standards as would apply in an appeal involving an action covered by subchapter II of chapter 75 with respect to which mitigation authority under this section exists.

* * * * *

§7123. Judicial review; enforcement

(a) Any person aggrieved by any final order of the Authority other than an order under-

(1) section 7122 of this title (involving an award by an arbitrator), unless the person alleges that the order is contrary to law or unless the order involves an unfair labor practice under section 7118 of this title, or

(2) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

* * * * *

§7121. Grievance procedures

(a)(1) Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in subsections (d), (e), and (g) of this section, the procedures shall be the exclusive administrative procedures for resolving grievances which fall within its coverage.

(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

(b)(1) Any negotiated grievance procedure referred to in subsection (a) of this section shall-

(A) be fair and simple,

(B) provide for expeditious processing, and

(C) include procedures that-

(i) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

(ii) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

(iii) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

(2)(A) The provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (1)(C)(iii) shall, if or to the extent that an alleged prohibited personnel practice is involved, allow the arbitrator to order-

(i) a stay of any personnel action in a manner similar to the manner described in section 1221(c) with respect to the Merit Systems Protection Board; and

(ii) the taking, by an agency, of any disciplinary action identified under section 1215(a)(3) that is otherwise within the authority of such agency to take.

(B) Any employee who is the subject of any disciplinary action ordered under subparagraph (A)(ii) may appeal such action to the same extent and in the same manner as if the agency had taken the disciplinary action absent arbitration.

(c) The preceding subsections of this section shall not apply with respect to any grievance concerning-

(1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);

(2) retirement, life insurance, or health insurance;

(3) a suspension or removal under section 7532 of this title;

(4) any examination, certification, or appointment; ~~or~~

(5) the classification of any position which does not result in the reduction in grade or pay of an employee~~.~~; or

(6) matters covered under sections 4303 and 7512 that would otherwise be appealable to the Merit Systems Protection Board.

(d) An aggrieved employee affected by a prohibited personnel practice under section 2302(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to section 7702 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(e)~~(1) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.~~

~~(2) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, an arbitrator shall be governed by section 7701(c)(1) of this title, as applicable.~~

(~~f~~e) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board. In matters similar to those covered under sections 4303 and 7512 of this title which arise under other personnel

systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

(~~g~~f)(1) This subsection applies with respect to a prohibited personnel practice other than a prohibited personnel practice to which subsection (d) applies.

(2) An aggrieved employee affected by a prohibited personnel practice described in paragraph (1) may elect not more than one of the remedies described in paragraph (3) with respect thereto. For purposes of the preceding sentence, a determination as to whether a particular remedy has been elected shall be made as set forth under paragraph (4).

(3) The remedies described in this paragraph are as follows:

(A) An appeal to the Merit Systems Protection Board under section 7701.

(B) A negotiated grievance procedure under this section.

(C) Procedures for seeking corrective action under subchapters II and III of chapter 12.

(4) For the purpose of this subsection, a person shall be considered to have elected-

(A) the remedy described in paragraph (3)(A) if such person has timely filed a notice of appeal under the applicable appellate procedures;

(B) the remedy described in paragraph (3)(B) if such person has timely filed a grievance in writing, in accordance with the provisions of the parties' negotiated procedure; or

(C) the remedy described in paragraph (3)(C) if such person has sought corrective action from the Office of Special Counsel by making an allegation under section 1214(a)(1).

(~~h~~g) Settlements and awards under this chapter shall be subject to the limitations in section 5596(b)(4) of this title.

Section 1109 would amend sections 5542 and 5544 of title 5, United States Code, to allow overtime pay equal to one and one-half times the hourly rate of basic pay for nonexempt Federal civilian employees assigned to temporary duty travel in exempt areas as defined by the Fair Labor Standards Act (FLSA) of 1938.

The foreign exemption provision provides that employees in foreign countries and certain U.S. territories are not covered by the overtime provisions of the FLSA. In 2011, the Department of the Navy (DON) proposed and received an exemption to allow payment of overtime to non-exempt General Schedule (GS) employees in a temporary duty (TDY) travel status working on a U.S. nuclear-powered aircraft carrier forward-deployed to Yokosuka, Japan. When these same employees are at their normal duty station, they receive one and one-half times their hourly rate of basic pay for all hours worked over 40 hours in a week which, prior to January 2011, they were not receiving while TDY in Yokosuka. This special pay authority, codified in 5 U.S.C. 5542(a)(6), now allows the same overtime rate to be paid to these employees while on TDY in Japan. This exemption does not apply to wage-grade employees covered by the Federal Wage System (FWS). The authority is set to expire September 30, 2017.

The fact that only one group of Federal employees in one foreign area receives this authority has created an inequity. We seek to revise the authority to include all nonexempt GS and nonexempt FWS employees in a temporary duty travel status in an exempt area.

Budget Implications: The totals for FY 2009 through FY 2012 show an average increase in overtime costs of 23 percent per year with the proposed legislation. The costs projected below ($M) for future years are calculated using a trend analysis with that percentage. Under the National Defense Authorization Act for FY 2015 (P.L. 113-291), the Navy is already authorized and utilizes this overtime authority and therefore it has indicated that this proposal would not inflate current civilian personnel costs. 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	0.022	0.027	0.031	0.036	0.040	Operation and Maintenance, Air Force	01	011C	
Air Force	0.005	0.006	0.007	0.008	0.009	Operation and Maintenance, Air Force	02	021Z	
Air Force	0.008	0.010	0.012	0.013	0.015	Operation and Maintenance, Air Force	03	031Z	
Air Force	0.026	0.032	0.037	0.042	0.047	Operation and Maintenance, Air Force	04	041Z	
Army does not intend to use this authority, which would have been funded from the following account: Operation and Maintenance, Army.									
Marine Corps does not intend to use this authority, which would have been funded from the following account: Operation and Maintenance, Marine Corps.									
Navy	.2	.21	.22	.23	.24	Operation and Maintenance, Navy	01	1B4B	
Defense Wide	0.082	0.059	0.036	0.013	0	Operation and Maintenance, Defense-Wide	04	300	
Total	0.343	0.344	0.343	0.342	0.351				

Changes to Existing Law: This proposal would make the following changes to section 5542 of title 5, United States Code, as amended by section 1103 of the NDAA for FY 2016:

TITLE 5, UNITED STATES CODE

§ 5542. Overtime rates; computation

(a) For full-time, part-time and intermittent tours of duty, hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or (with the exception of an employee engaged in professional or technical engineering or scientific activities for whom the first 40 hours of duty in an administrative workweek is the basic workweek and an employee whose basic pay exceeds the minimum rate for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) for whom the first 40 hours of duty in an administrative workweek is the basic workweek) in excess of 8 hours in a day, performed by an employee are overtime work and shall be paid for, except as otherwise provided by this subchapter, at the following rates:

(1) For an employee whose basic pay is at a rate which does not exceed the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(2) For an employee whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to the greater of one and one-half times the hourly rate of the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) or the hourly rate of basic pay of the employee, and all that amount is premium pay.

(3) Notwithstanding paragraphs (1) and (2) of this subsection for an employee of the Department of Transportation who occupies a nonmanagerial position in GS–14 or under and, as determined by the Secretary of Transportation,

(A) the duties of which are critical to the immediate daily operation of the air traffic control system, directly affect aviation safety, and involve physical or mental strain or hardship;

(B) in which overtime work is therefore unusually taxing; and

(C) in which operating requirements cannot be met without substantial overtime work;

the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(4) Notwithstanding paragraph (2) of this subsection, for an employee who is a law enforcement officer, and whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to the greater of-

(A) one and one-half times the minimum hourly rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

(B) the hourly rate of basic pay of the employee,

and all that amount is premium pay.

(5) Notwithstanding paragraphs (1) and (2), for an employee of the Department of the Interior or the United States Forest Service in the Department of Agriculture engaged in emergency wildland fire suppression activities, the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

~~(6)(A) Notwithstanding paragraphs (1) and (2), for an employee of the Department of the Navy who is assigned to temporary duty to perform work aboard, or dockside in direct support of, the nuclear aircraft carrier that is forward deployed in Japan and who would be nonexempt under the Fair Labor Standards Act but for the application of the foreign area exemption in section 13(f) of that Act (29 U.S.C. 213(f)), the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.~~

~~(B) Subparagraph (A) shall expire on September 30, 2017.~~

* * * * *

(h) Notwithstanding section 13(f) of the Fair Labor Standards Act (29 U.S.C. 213(f)), an employee who is working at a location in a foreign country, or in a territory under the jurisdiction of the United States covered by such section 13(f), in temporary duty travel status while maintaining an official duty station or worksite in an area of the United States not covered by such section 13(f) shall, for all purposes, not be considered to be exempted from section 7 of such Act on the basis of the employee performing work at such a location.

§ 5544. Wage-board overtime and Sunday rates; computation

* * * * *

(d) Notwithstanding section 13(f) of the Fair Labor Standards Act (29 U.S.C. 213(f)), an employee whose overtime pay is determined in accordance with subsection (a) who is working at a location in a foreign country, or in a territory under the jurisdiction of the United States covered by such section 13(f), in temporary duty travel status while maintaining an official duty station or worksite in an area of the United States not covered by such section 13(f) shall, for all purposes, not be considered to be exempted from section 7 of such Act on the basis of the employee performing work at such a location.

Section 1110 would modify the recruitment and hiring process to provide additional flexibility in how college graduates and students are hired. For example, this could include creating a limited hiring authority that would allow agencies to hire college graduates noncompetitively into certain positions that either require completion of specific educational requirements or for which completion of an academic degree can be used to meet qualification requirements. Under this proposal, Federal agencies would determine recruitment sources, processes for the solicitation of applications, and would be held responsible for merit-based selections. Because this recent graduate authority is not intended to replace competitive hiring

and other entry-level hiring programs, the Director of the Office of Personnel Management would have the authority to cap the number of hires made this authority.

Budgetary Implications: This proposal does not have any significant government-wide cost implications.

Section 1111 would create a new incentive for eligible individuals to accept employment for hard-to-fill civilian positions. The incentive would be created by adding a new section 6329a in title 5, United States Code. The new title 5 section would allow a newly hired employee to be granted up to 80 hours of paid time off as an incentive to accept a job offer in such a position. It adds an item to the toolbox available to hiring managers by allowing them to offer certain highly skilled or highly qualified new hires an incentive of up to 80 hours of paid time off – upon entry on duty – that normally takes at least 40 weeks to accumulate.

The National Defense Authorization Act for Fiscal Year (FY) 2010 required the Department to develop a new performance appraisal system, redesign procedures for use within DoD to make appointments to positions within the competitive service, and authorized the Secretary of Defense, at his discretion, to establish a Civilian Workforce Incentive Fund. In accordance with Executive Order (E.O.) 13522, DoD involved bargaining unit employees through their union representatives in the design and implementation of the new personnel authorities. This collaborative labor-management initiative came to be known as "New Beginnings", and involved the creation of three joint labor-management design teams. The Civilian Workforce Incentive Fund Design Team recommended this authority which would grant up to 80 hours of paid time off for new hires in hard-to-fill civilian positions.

Many prospective employees are more concerned about their quality of life than they are about the amount of money they are offered to take a position. Research has shown that paid time off is an important piece of an employee's total compensation package. Paid time off may be used as an incentive to recruit and retain employees. Many newly appointed employees, however, typically accrue time off for vacations/personal business/emergencies at the slow rate of four hours every two weeks.

This proposal could help attract **high quality** private sector personnel who must forsake a significant leave package, or those interested in work-life balance. **Knowing that they have paid time off available could motivate applicant to accept a difficult-to-fill position. Additionally, a paid time off incentive could offer the applicant peace of mind that, if an emergency arises, he or she would have paid time off immediately available for use.**

The monetary recruitment incentive already available is an effective tool for attracting high quality candidates. A paid time off incentive provides another tool to recruit specific candidates for hard-to-fill positions. Selective use of a paid time off incentive would likely raise no more equity concerns than selective use of the cash recruitment incentive. Both incentives would be offered only to certain employment candidates. An employee could receive both incentives in connection with the same new appointment.

Section 6303 of title 5, U.S.C., allows agencies to provide service credit towards a new hire's annual leave service credit date for non-Federal work experience and experience in the uniformed service. As a result, those new hires may accumulate paid time off at a rate quicker than a new hire not meeting the criteria. While that allows quicker accumulation, they still begin their employment with a balance of zero hours. This proposal supplements the more rapid accumulation of leave time by also providing a bank of hours for paid time off upon entry on duty.

Agencies have authority to advance an employee both annual and sick leave (5 U.S.C. 6302(d) and 6307(d)). Use of these items requires the advanced leave to be paid back over time. This proposal supplements leave advancement by also providing a bank of hours for paid time off upon entry on duty.

The proposal includes parameters that limit its use to difficult-to-fill positions, prescribe the conditions necessary for its use or forfeiture, and require a service agreement.

Budget Implications: The resources reflected in the table below are funded within the FY 2017 President's Budget. The total cost of the incentive, if all 80 hours of paid time off are taken in the first year, results in 3.8 percent (80 hours/2087 total hours in a year) of salary. If taken over two years, the cost of the incentive is 1.9 percent (80 hours/4174 total hours) during those two years. The cost of the incentive continually decreases over an employee's length of service.

If 1,000 new appointees (divided proportionately amongst the components based on the employee distribution percentage by component) averaged $24.00 per hour in salary ($50,088 per year), and all took the 80 hours of paid time off in their first year of employment, the cost of the incentive by Fiscal Year would be:

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	0.408	0.419	0.430	0.439	0.448	Operation and Maintenance, Army	01	115, 121, 122, 131, 132, 133	
Army	0.003	0.003	0.003	0.003	0.003	Operation and Maintenance, Army	02	212	
Army	0.119	0.120	0.121	0.123	0.126	Operation and Maintenance, Army	03	314, 321, 324, 331, 332, 334	
Army	0.168	0.171	0.172	0.176	0.179	Operation and Maintenance,	04	411, 422, 423, 424,	

						Army		431, 433, 434, 435	
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.									
Air Force	0.112	0.114	0.116	0.119	0.121	Operation and Maintenance, Air Force	01	060, 080	
Air Force	0.112	0.114	0.116	0.119	0.121	Operation and Maintenance, Air Force	02	140, 180	
Air Force	0.112	0.114	0.116	0.119	0.121	Operation and Maintenance, Air Force	03	230, 320	
Air Force	0.112	0.114	0.116	0.119	0.121	Operation and Maintenance, Air Force	04	340, 350	
Defense Wide	0.272	0.277	0.283	0.288	0.294	Operation and Maintenance, Defense-Wide	04	300	
Total	1.418	1.446	1.473	1.505	1.534				

*assumes an approximate 2% salary increase over the previous year

NUMBER OF PERSONNEL AFFECTED									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	211	211	211	211	211	Operation and Maintenance, Army	01	115, 121, 122, 131, 132, 133	
Army	2	2	2	2	2	Operation and Maintenance, Army	02	212	
Army	60	60	60	60	60	Operation and Maintenance, Army	03	314, 321, 324, 331, 332, 334	
Army	87	87	87	87	87	Operation and Maintenance, Army	04	411, 422, 423, 424, 431, 433, 434, 435	
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.									
Air Force	58	58	58	58	58	Operation and Maintenance, Air Force	01	060, 080	
Air Force	57	57	57	57	57	Operation and Maintenance,	02	140, 180	

						Air Force			
Air Force	58	58	58	58	58	Operation and Maintenance, Air Force	03	230, 320	
Air Force	57	57	57	57	57	Operation and Maintenance, Air Force	04	240, 350	
Defense Wide	140	140	140	140	140	Operation and Maintenance, Defense-Wide	04	300	
Total	730	730	730	730	730				

Changes to Existing Law: This proposal would add a new section to title 5, United States Code. The proposed new section is set forth in full in the text above.

Subtitle B—Federal Employees Paid Parental Leave

Section 1121—This section establishes the title of the legislation as the "Federal Employees Paid Parental Leave Act of 2016".

Section 1122-- *Paid Parental Leave under Title 5*

(a) *Amendments to Title 5*—This subsection amends sections 6381 and 6382 of title 5, United States Code.

(a)(1) This paragraph amends 5 U.S.C. 6381(1)(B) to change the definition of "employee" that is used in defining eligibility for coverage under the Family and Medical Leave Act (FMLA) provisions in 5 U.S.C. chapter 63, subchapter V. Under the change, the normally applicable requirement that an individual must have completed at least 12 months of service as an employee (as defined at 5 U.S.C. 6381(1)(A)) would not be applicable to an individual who otherwise meets the definition of an "employee" under 5 U.S.C. 6381(1)(A) and who is invoking FMLA leave based on the birth or placement of a child under section 6382(a)(1)(A) or (B). Thus, new employees (who meet the definition in section 6381(1)(A)) would have immediate right to paid parental leave if otherwise eligible. Individuals who meet the revised version of the definition of "employee" would be covered under FMLA to the same extent as other eligible employees, including eligibility for the FMLA employment and benefit protections provided under section 6384.

(a)(2) This paragraph amends 5 U.S.C. 6382 in three places.

(a)(2)(A) This subparagraph amends 5 U.S.C. 6382(a)(1)(B) to make clear that FMLA leave under subparagraph (B)—granted because of placement of a son or daughter with the employee for adoption or foster care—may be used to care for such son or daughter, consistent with the language regarding FMLA leave under subparagraph (A) that is granted "because of the birth of a son or daughter and in order to care for such son or daughter."

(a)(2)(B) This subparagraph amends 5 U.S.C. 6382(b)(1) to provide that an employing agency may allow FMLA leave based on the birth or placement of a child under section 6382(a)(1)(A) or (B) to be used intermittently or on a reduced work schedule. In existing section 6382(b)(1), there is a general bar on using such FMLA leave intermittently or on a reduced schedule unless the employing agency agrees otherwise. The amended section 6382(b)(1) would require that an employing agency accommodate the employee's schedule requests to the extent that it does not disrupt unduly agency operations. To the extent that the employee's request for use of FMLA leave intermittently or on a reduced schedule is based on a medical necessity related to a serious health condition, the agency would be required to handle the scheduling consistent with the treatment of employees who are using FMLA leave based on a serious health condition under section 6382(a)(1)(C) or (D), as provided in sections 6382(b)(1)-(2) and (e) and 6383. In general, employees are entitled to use FMLA leave intermittently if required based on a medical necessity associated with a serious health condition.

(a)(2)(C) This paragraph amends 5 U.S.C. 6382(d), which deals with the substitution of paid leave for FMLA unpaid leave.

- (d)(1) The existing section 6382(d) is, in effect, redesignated as subsection (d)(1) and amended. References to subparagraphs (A) and (B) in section 6382(a)(1) (dealing with the birth or placement of a child) are removed from the new subsection (d)(1). The new subsection (d)(1) now applies only to use of FMLA related to the care of a family member with a serious health condition (§ 6382(a)(1)(C)), incapacitation of an employee because of a serious health condition (§ 6382(a)(1)(D)), a qualifying exigency arising out of the fact that a qualifying family member is on covered active duty (or has been notified of an impending call or order to such duty) in the Armed Forces (§ 6382(a)(1)(E)), or care of a covered servicemember who is the employee's spouse, son, daughter, parent, or next of kin (§ 6382(a)(3)). The new subsection (d)(1) provides that—in addition to accrued or accumulated annual and sick leave—advanced annual and sick leave, donated annual leave, and any other type of paid time off may be substituted for FMLA unpaid leave covered by subparagraph (C), (D), or (E) of section 6382(a)(1). Consistent with current rules, sick leave, advanced sick leave, donated annual leave, and such other paid time off may be substituted for FMLA unpaid leave covered by subparagraph (C), (D), or (E) only if used for a purpose that is allowed under the normal rules. (See the new subparagraph (A) in section 6382(d)(1).) The new subsection (d)(1) also provides that any type of paid time off may be substituted for FMLA unpaid leave under section 6382(a)(3) with substitution subject to the normal rules governing each type of paid time off, except that, consistent with current law under 5 U.S.C. 6382(d), accrued or accumulated sick leave and advanced sick leave may be substituted for FMLA unpaid leave under section 6382(a)(3) notwithstanding the conditions and limitations in law and regulation that would normally apply to such sick leave. (See the new subparagraph (B) added in section 6382(d)(1).)

  The existing section 6382(d) allows substitution of sick leave "except that nothing in this subchapter shall require an employing agency to provide paid sick leave in any situation in which such employing agency would not normally provide any such paid leave." The amended language in the new subsection (d)(1)(A) related to substitution for FMLA unpaid leave under subparagraphs (C), (D), and (E) of section 6382(a)(1) more clearly

states: "except that an employing agency may not permit substitution of sick leave . . . in a situation for which usage of such leave is not normally allowed." The existing language has the same effect as the amended language, since an express positive authority would be needed to allow an employing agency to provide sick leave for an otherwise non-approved purpose (given that sick leave is governed by statutory requirements) and the existing FMLA subchapter provides no such authority to employing agencies except for employees who are caring for a servicemember under section 6382(a)(3). (See last sentence of existing section 6382(d). See also new subparagraph (B) in proposed amended section 6382(d)(1)(B).) The FMLA legislation for non-Federal employers uses similar language as found in existing section 6382(d): "except that nothing in this title shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave." (See section 102(d)(2)(B) of FMLA or 29 U.S.C. 2612(d)(2)(B).) Such language is appropriate for non-Federal employers whose leave systems are not established by law, but creates confusion in the context of a Federal leave system established by law. The use of normal sick leave rules will have little effect on the ability to substitute sick leave for FMLA leave under the new section 6382(d)(1)(A). Sick leave may be substituted for FMLA leave under section 6382(a)(1)(D) based on the employee's serious health condition without restriction. Generally, sick leave may be substituted for FMLA leave under section 6382(a)(1)(C) based on a family member's serious health condition, except that the normal sick leave rules might limit the number of hours that may be substituted given the leave year limit of 12 workweeks (e.g., 480 hours for a full-time employee) of sick leave to care for a family member with a serious health condition and the overall limit of 12 workweeks of sick leave for all family care and bereavement purposes. (See 5 CFR 630.401(c)-(d).) Since the FMLA unpaid leave entitlement is 12 workweeks in any 12-month period, those sick leave limits should generally not become an issue. Use of FMLA leave under section 6382(a)(1)(E) based on an exigency related to active duty in the Armed Forces does not involve activities that would be covered by sick leave; thus, sick leave substitution is not applicable.

- (d)(2) This paragraph allows an employee to substitute any paid leave that is "available" in place of FMLA unpaid leave used under section 6382(a)(1)(A) or (B) (dealing with birth or placement of a child).

- (d)(3) This paragraph defines what paid leave is available for substitution under paragraph (2).

- (d)(3)(A) This subparagraph provides entitlement to 6 administrative workweeks of paid parental leave during a period of FMLA leave granted based on the birth or placement of a child. This paid parental leave will be available for use during the 12-month period beginning on the date of birth or placement. Employees may continue to use FMLA leave based on birth or placement of a child *prior* to birth or placement, as provided in 5 CFR 630.1203(d); however, paid parental leave would not be substituted for such FMLA leave. To the extent there is a qualifying need to use FMLA leave under section 6382(a)(1)(A) or (B) before birth or placement, such employees may take unpaid FMLA leave or may substitute for unpaid leave any accrued and advanced annual or sick leave (without regard to the normal conditions and limitations on use of sick leave). (See

subsection (d)(3)(C) below.) They may also substitute other paid time off, including donated annual leave under a leave bank or leave transfer program, as long as the use meets any applicable conditions (if any) for the paid time off in question. (See subsection (d)(3)(D) below.) While not addressed in the bill, employees may also be able to telework to address medical needs that present themselves before giving birth (e.g., the need for bed rest), reducing the need to take leave.

- (d)(3)(B) This subparagraph provides that an employee's accrued or accumulated annual leave, as well as advanced annual leave, may be substituted for FMLA leave based on the birth or placement of a child. This is consistent with current law, except that it clarifies that advanced annual leave may be substituted (as provided in OPM's current regulations at 5 CFR 630.1206(b)(2)).

- (d)(3)(C) This subparagraph provides that an employee's accrued or accumulated sick leave, as well as advanced sick leave, may be substituted for FMLA leave based on the birth or placement of a child, notwithstanding the conditions and limitations generally applicable under law and regulations. In other words, this subparagraph provides special authority to use sick leave for non-approved purposes, when substituting for this particular type of FMLA leave. Specifically, under this new provision, an employee may use sick leave to care for his or her newly born child or newly placed adopted or foster child when the child is healthy (e.g., for bonding purposes) or for the purpose of engaging in activities necessary for placement of a foster child with the employee. (Existing sick leave law and regulations already allow sick leave to be used for the purpose of engaging in activities necessary to place a child for adoption. See 5 U.S.C. 6307(c) and 5 CFR 630.401(a)(6). Thus, under current law, sick leave for adoption purposes may be substituted for FMLA unpaid leave granted in connection with the placement of a child for adoption.) All this means that sick leave may be substituted without restriction for FMLA leave granted in connection with the birth or placement of a child under 5 U.S.C. 6382(a)(1)(A) or (B), since the valid uses of sick leave are expanded to correspond with the conditions under which such FMLA leave is granted. We note that there must first be a valid use of FMLA leave under subparagraph (A) or (B). For example, activities such as spending time with one's family prior to a child's birth or preparing a room for the baby before its birth are not qualifying activities under subparagraph (A). Subparagraph (A) covers leave taken "in order to care for" the child.

- (d)(3)(D) This subparagraph provides that an employee may substitute other types of paid time off that the employee is authorized to use, as long as such use is consistent with the conditions that normally govern use of the particular type of leave in question. For example,donated annual leave may be used to substitute for unpaid FMLA, but only for purposes consistent with use under the leave sharing programs—i.e., for a "medical emergency." Other types of paid time off for which substitution may be possible include time off awards under 5 U.S.C. 4502(e), compensatory time off under 5 U.S.C. 5543, compensatory time off for travel under 5 U.S.C. 5550b, and credit hours under a flexible work schedule under 5 U.S.C. chapter 61, subchapter II. Substitution would not generally be possible for military leave under 5 U.S.C. 6323, since such leave is for performing certain military duties.

- (d)(4) This paragraph provides that an employee may not be required to use any amount of his or her annual leave, sick leave, or other paid time off before being allowed to use paid parental leave under paragraph (3)(A).

- (d)(5) This paragraph addresses various requirements, conditions, and limitations that pertain to paid parental leave.

- (d)(5)(A) This subparagraph provides that paid parental leave under paragraph (3)(A) is to be funded from normal appropriations or funds for employee salaries and expenses.

- (d)(5)(B) This subparagraph provides that paid parental leave is not considered to be annual or vacation leave in applying the lump-sum annual leave payment provisions in 5 U.S.C. 5551-5552 or for any other purpose.

- (d)(5)(C) This subparagraph provides that paid parental leave not used within 12 months of the birth or placement (consistent with FMLA requirements in section 6382(a)) may not be reserved for future use nor may it be converted to a cash payment by any means.

- (d)(5)(D) This subparagraph would limit the amount of paid parental leave that may be granted to any employee to 6 weeks in any 12-month period beginning on the date of birth or placement of child. This would make clear that an employee cannot get multiple entitlements to 6 weeks of paid parental leave when the employee has multiple children born simultaneously (e.g., twins) or multiple children adopted or placed in foster care with employee in close time proximity. For example, if an employee has two foster children placed 6 months apart, there would be two 12-month periods beginning on the date of each placement. In each 12-month period, the amount of paid parental leave would be limited to 6 weeks. This would operate similar to the FMLA limitation that an employee may be granted no more than 12 weeks of FMLA unpaid leave in any 12-month period, even if there are multiple events that could trigger entitlement to FMLA unpaid leave.

- (d)(5)(E) This subparagraph would establish a lifetime aggregate limit of 30 administrative workweeks of paid parental leave for a given employee based on placement of children for foster care with that employee. This limitation is based on the fact that a person may have many foster children. Also, this subparagraph would provide that paid parental leave may not be provided in the case of a foster child placement that is not expected to last for at least one year (e.g., short-term emergency placements).

- (d)(5)(F) This subparagraph would bar granting paid parental leave based on the placement of a child via adoption or a foster care arrangement if the same employee was previously granted paid parental leave for the same child based on a previous foster care placement.

- (d)(5)(G) This subparagraph would allow paid parental leave to be used in increments of hours (or fractions thereof), consistent with the ability to use FMLA leave intermittently. Also, this subparagraph specifies that 6 administrative workweeks equates to 240 hours for an employee with regular full-time work schedule (40 hours a week or 80 hours

biweekly) and that 240 hours must be converted to a proportional number of hours for employees with part-time, seasonal, or uncommon tours of duty. For example, for an employee who has an established 20-hours-per-week part-time work schedule, 240 hours would be converted to 120 hours (which would still cover 6 administrative workweeks). For seasonal workers, the benefit would be prorated by the portion of the year that constitutes the work season. For example, if the work season were 6 months, a full-time employee would get 120 hours, not 240 and a 20-hours-per-week employee would get 60 hours.

- (d)(5)(H) This subparagraph would make clear that an entitlement to paid parental leave would not extend a seasonal employee's work season. Paid parental leave could be used only during the designated work season when the employee would normally be in pay status.

- (d)(6) This paragraph requires the Director of the Office of Personnel Management to prescribe any regulations necessary to carry out subsection (d), including—

  - regulations regarding the manner in which an employee may designate any day or other period as to which such employee wishes to use paid parental leave; and

  - regulations regarding the circumstances under which an employee may retroactively change the type of leave he or she is charged. For example, OPM could regulate that an employee could retroactively redesignate leave taken under section 6382(a)(1)(C) or (D) (based on serious health condition) to leave taken under section 6382(a)(1)(A) (based on birth of a child), if conditions are met, and then allow retroactive substitution of paid parental leave for the unpaid FMLA leave under section 6382(a)(1)(A).

(b) *Effective Date*—This subsection provides that the amendments made by section 1122 shall be effective 1 year after the date of enactment. This provides the Director of the Office of Personnel Management with time to promulgate necessary regulations and guidance. While the bill's provisions would take effect prospectively, a birth or placement of a child before the effective date could trigger paid parental leave as long as the employee has unused FMLA leave available and is within the 12-month period following birth or placement.

TITLE XII—MATTERS RELATED TO FOREIGN NATIONS

Subtitle A—Consolidation and Reform of Department of Defense Security Cooperation Authorities

Section 1201 would create a new chapter 16 in title 10, United States Code, entitled "Security Cooperation" and would transfer existing security cooperation related provisions from elsewhere in Title 10 to this new chapter.

This proposal is part of a package of Fiscal Year 2017 security cooperation authorities reform proposals sponsored by the Under Secretary of Defense for Policy intended to consolidate and simplify Title 10 security cooperation authorities.

Security cooperation authorities are currently dispersed widely throughout Title 10 and public law. This disorganization leads to confusion about the nature and scope of security cooperation. Establishing Chapter 16 will accomplish two objectives. First, arranging security cooperation authorities under a single security cooperation chapter will provide greater clarity about the nature and scope of Department of Defense (DoD) authorities to those who plan, manage, and implement security cooperation programs. The creation of the chapter will enable us to standardize language within the chapter and provide definitions that can be consistently applied across all security cooperation authorities. The resulting clarity will lead to improved effectiveness of DoD security cooperation authorities. Second, security cooperation continues to be a key element of national and DoD strategies. The current disjointed nature of these authorities presents challenges to the organizing, training, and equipping necessary to accomplish DoD objectives through security cooperation. Establishing a single chapter that will become the repository of current and any future security cooperation authorities will help DoD to build the forces and capabilities necessary to use security cooperation tools more effectively.

The transfer of security cooperation authorities to the new chapter does not affect those authorities except by setting common standards and definitions that apply to all sections within the new chapter. Subchapter I, General Matters, defines what is meant by "appropriate committees" of Congress for all sections that require notification of the appropriate committees. The definitions section also establishes what limits apply to small scale construction in the sections within the security cooperation chapter.

Subsection (d) of the proposal would transfer to the new chapter the current section of title 10, relating to the DoD Regional Centers, and would add to the transferred section, without substantive change, various provisions of law relating to the authorities of the DoD Regional Centers that are contained in the National Defense Authorization Act (NDAA) for Fiscal Year 1997 (Public Law 104-201; 10 U.S.C. 113 note), the NDAA for Fiscal Year 1995 (Public Law 103-337; 10 U.S.C. 113 note), the Duncan Hunter NDAA for Fiscal Year 2009 (Public Law 110-417; 10 U.S.C. 184 note), and the Department of Defense Appropriations Act, 2003 (Public Law 107-248;10 U.S.C. prec. 2161 note)).

Subsection (h) of the proposal would consolidate into a single section in the new chapter 16 (section 347) the three title 10 sections currently comprising the Aviation Leadership Program (10 U.S.C. Sections 9381, 9382, and 9383). Nothing is substantively changed in the authority for that program.

Subsection (j) of the proposal would transfer to the new chapter without substantive change the authority for the Inter European Air Forces Academy contained in section 1268 of the Carl Levin and Howard P. "Buck" McKeon NDAA for Fiscal Year 2015 (Public Law 113-291; 10 U.S.C. 9411 note)).

Budget Implications: The tables below detail resource requirements associated with this proposal. The resources reflected in the table below are funded within the FY2017 President's Budget.

10 USC 1051b, providing the authority for awards and mementos for foreign recipients.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	.02	.02	.02	.02	.02	Operation and Maintenance, Army	01	138	0201109 A
USAF	Air Force does not intend to use this authority, which would have been funded in the following account: Operation and Maintenance, Air Force.								

FY12 NDAA Section 1081, providing the authority to conduct defense institution building programs. These funds should be from Defense-wide O&M and managed by DSCA.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Dept of Defense	9.2	10.4	11.3	11.5	24.0	Operation and Maintenance, Defense-Wide	04	4GTD	1002200T

10 USC 184, providing for the DSCA-managed Regional Centers.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Dept of Defense	58.6	58.9	58.8	59.9	61.3	Operation and Maintenance, Defense-Wide	04	4GTD	0800101T

10 USC 2166, Western Hemisphere Institute for Security Cooperation.

RESOURCE REQUIREMENTS ($MILLIONS)	

	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Army	.894	.920	.939	.955	.977	Operation and Maintenance, Army	03	324	0804772 A
Army	8.630	8.222	8.296	8.433	8.614	Operation and Maintenance, Army	03	321	0804731 A
Army	.839	.853	.866	.883	.904	Operation and Maintenance, Army	04	442	1001010 A

10 USC 2350m, authority to participate in multinational military centers of excellence.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Army	.703	.772	.796	.822	.829	Operation and Maintenance, Army	04	441	1001497 A

10 USC Ch 905, Aviation Leadership Program, consisting of 10 USC 9381, 10 USC 9382, and 10 USC 9383, USAF.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
USAF	2.9	2.96	3.02	3.08	3.14	Operation and Maintenance, Air Force	03	32B	Multiple

10 USC 9415, the Inter-American Air Forces Academy.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Student	0.18	0.18	0.18	0.18	0.18	Operation and	03	032A	84731F

travel						Maintenance, Air Force			
O&M	0.11	0.11	0.11	0.11	0.11	Operation and Maintenance, Air Force	03	032A	84731F
Personnel	1.22	+.1.24	+1.26	+1.28	+1.30	Operation and Maintenance, Air Force	01, 02, 04	032A	84731F
Total	+1.51	+1.53	+1.55	+1.57	+1.59				

FY15 NDAA 1268, Inter-European Air Forces Academy, USAF.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Student travel	0.205	0.209	0.213	0.217	0.221	Operation and Maintenance, Air Force	03	032A	84731F
O&M	0.300	0.305	0.310	0.316	0.321	Operation and Maintenance, Air Force	03	032A	84731F
Personnel	1.171	1.192	1.214	1.238	1.275	Operation and Maintenance, Air Force	01, 02, 04	032A	84731F
Total	1.675	1.706	1.737	1.771	1.817				

Changes to existing law: This proposal would make the following changes to existing law:

TITLE 10, UNITED STATES CODE

§~~184~~ 341. Regional Centers for Security Studies

(a) IN GENERAL.—The Secretary of Defense shall administer the Department of Defense Regional Centers for Security Studies in accordance with this section as international venues for bilateral and multilateral research, communication, and exchange of ideas involving military and civilian participants.

(b) REGIONAL CENTERS SPECIFIED.—(1) A Department of Defense Regional Center for Security Studies is a Department of Defense institution that—

(A) is operated, and designated as such, by the Secretary of Defense for the study of security issues relating to a specified geographic region of the world; and

(B) serves as a forum for bilateral and multilateral research, communication, and exchange of ideas involving military and civilian participants.

(2) The Department of Defense Regional Centers for Security Studies are the following:

(A) The George C. Marshall European Center for Security Studies, established in 1993 and located in Garmisch-Partenkirchen, Germany.

(B) The Daniel K. Inouye Asia-Pacific Center for Security Studies, established in 1995 and located in Honolulu, Hawaii.

(C) The William J. Perry Center for Hemispheric Defense Studies, established in 1997 and located in Washington, D.C.

(D) The Africa Center for Strategic Studies, established in 1999 and located in Washington, D.C.

(E) The Near East South Asia Center for Strategic Studies, established in 2000 and located in Washington, D.C.

(3) No institution or element of the Department of Defense may be designated as a Department of Defense Regional Center for Security Studies for purposes of this section, other than the institutions specified in paragraph (2), except as specifically provided by law after October 17, 2006.

(c) REGULATIONS.—The administration of the Regional Centers under this section shall be carried out under regulations prescribed by the Secretary.

(d) PARTICIPATION.—Participants in activities of the Regional Centers may include United States and foreign military, civilian, and nongovernmental personnel.

(e) EMPLOYMENT AND COMPENSATION OF FACULTY.—At each Regional Center, the Secretary may, subject to the availability of appropriations—

(1) employ a Director, a Deputy Director, and as many civilians as professors, instructors, and lecturers as the Secretary considers necessary; and

(2) prescribe the compensation of such persons, in accordance with Federal guidelines.

(f) PAYMENT OF COSTS.—(1) Participation in activities of a Regional Center shall be on a reimbursable basis (or by payment in advance), except in a case in which reimbursement is waived in accordance with paragraph (3).

(2) For a foreign national participant, payment of costs may be made by the participant, the participant's own government, by a Department or agency of the United States other than the Department of Defense, or by a gift or donation on behalf of one or more Regional Centers accepted under section 2611 of this title on behalf of the participant's government.

(3)**(A)** The Secretary of Defense may waive reimbursement of the costs of activities of the Regional Centers for foreign military officers and foreign defense and security civilian government officials from a developing country if the Secretary determines that attendance of such personnel without reimbursement is in the national security interest of the United States. Costs for which reimbursement is waived pursuant to this paragraph shall be paid from appropriations available to the Regional Centers.

(B)(i) In fiscal years 2009 through 2019, the Secretary of Defense may, with the concurrence of the Secretary of State, waive reimbursement otherwise required under this subsection of the costs of activities of Regional Centers under this section for personnel of nongovernmental and international organizations who participate in activities of the Regional Centers that enhance cooperation of nongovernmental organizations and international organizations with United States forces if the Secretary of Defense determines

that attendance of such personnel without reimbursement is in the national security interests of the United States.

(ii) The amount of reimbursement that may be waived under clause (i) in any fiscal year may not exceed $1,000,000.

(4) Funds accepted for the payment of costs shall be credited to the appropriation then currently available to the Department of Defense for the Regional Center that incurred the costs. Funds so credited shall be merged with the appropriation to which credited and shall be available to that Regional Center for the same purposes and same period as the appropriation with which merged.

(5) Funds available for the payment of personnel expenses under the Latin American cooperation authority set forth in section 1050 of this title are also available for the costs of the operation of the William J. Perry Center for Hemispheric Defense Studies.

(6) Funds available to carry out this section, including funds accepted under paragraph (4) and funds available under paragraph (5), shall be available, to the extent provided in appropriations Acts, for programs and activities under this section that begin in a fiscal year and end in the following fiscal year.

(g) SUPPORT TO OTHER AGENCIES.—The Director of a Regional Center may enter into agreements with the Secretaries of the military departments, the heads of the Defense Agencies, and, with the concurrence of the Secretary of Defense, the heads of other Federal departments and agencies for the provision of services by that Regional Center under this section. Any such participating department and agency shall transfer to the Regional Center funds to pay the full costs of the services received.

(h) AUTHORITIES SPECIFIC TO MARSHALL CENTER.—(1) The Secretary of Defense may authorize participation by a European or Eurasian country in programs of the George C. Marshall European Center for Security Studies (in this subsection referred to as the "Marshall Center") if the Secretary determines, after consultation with the Secretary of State, that such participation is in the national interest of the United States.

(2)(A) In the case of any person invited to serve without compensation on the Marshall Center Board of Visitors, the Secretary of Defense may waive any requirement for financial disclosure that would otherwise apply to that person solely by reason of service on such Board.

(B) A member of the Marshall Center Board of Visitors may not be required to register as an agent of a foreign government solely by reason of service as a member of the Board.

(C) Notwithstanding section 219 of title 18, a non-United States citizen may serve on the Marshall Center Board of Visitors even though registered as a foreign agent.

(3)(A) The Secretary of Defense may waive reimbursement of the costs of conferences, seminars, courses of instruction, or similar educational activities of the Marshall Center for military officers and civilian officials from states located in Europe or the territory of the former Soviet Union if the Secretary determines that attendance by such personnel without reimbursement is in the national security interest of the United States.

(B) Costs for which reimbursement is waived pursuant to subparagraph (A) shall be paid from appropriations available for the Center.

(i) AUTHORITIES SPECIFIC TO INOUYE CENTER.—(1) The Secretary of Defense may waive reimbursement of the cost of conferences, seminars, courses of instruction, or similar educational

activities of the Daniel K. Inouye Asia-Pacific Center for Security Studies for military officers and civilian officials of foreign countries if the Secretary determines that attendance by such personnel, without reimbursement, is in the national security interest of the United States.

(2) Costs for which reimbursement is waived pursuant to paragraph (1) shall be paid from appropriations available for the Center.

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§~~1051b~~ 313. Bilateral or regional cooperation programs: awards and mementos to recognize superior noncombat achievements or performance

(a) GENERAL AUTHORITY.—The Secretary of Defense may present awards and mementos purchased with funds appropriated for operation and maintenance of the armed forces to recognize superior noncombat achievements or performance by members of friendly foreign forces and other foreign nationals that significantly enhance or support the National Security Strategy of the United States.

(b) ACTIVITIES THAT MAY BE RECOGNIZED.—Activities that may be recognized under subsection (a) include superior achievement or performance that—

(1) plays a crucial role in shaping the international security environment in ways that protect and promote United States interests;

(2) supports or enhances United States overseas presence and peacetime engagement activities, including defense cooperation initiatives, security assistance training and programs, and training and exercises with the armed forces;

(3) helps to deter aggression and coercion, build coalitions, and promote regional stability; or

(4) serves as a role model for appropriate conduct by military forces in emerging democracies.

(c) LIMITATION.—Expenditures for the purchase or production of mementos for award under this section may not exceed the minimal value in effect under section 7342(a)(5) of title 5.

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§~~2166~~ 342. Western Hemisphere Institute for Security Cooperation

(a) ESTABLISHMENT AND ADMINISTRATION.—(1) The Secretary of Defense may operate an education and training facility for the purpose set forth in subsection (b). The facility shall be known as the "Western Hemisphere Institute for Security Cooperation".

(2) The Secretary may designate the Secretary of a military department as the Department of Defense executive agent for carrying out the responsibilities of the Secretary of Defense under this section.

(b) PURPOSE.—The purpose of the Institute is to provide professional education and training to eligible personnel of ~~nations~~ countries of the Western Hemisphere within the context of the democratic principles set forth in the Charter of the Organization of American States (such

charter being a treaty to which the United States is a party), while fostering mutual knowledge, transparency, confidence, and cooperation among the participating ~~nations~~ countries and promoting democratic values, respect for human rights, and knowledge and understanding of United States customs and traditions.

(c) ELIGIBLE PERSONNEL.—(1) Subject to paragraph (2), personnel of ~~nations~~ countries of the Western Hemisphere are eligible for education and training at the Institute as follows:

(A) Military personnel.

(B) Law enforcement personnel.

(C) Civilian personnel.

(2) The Secretary of State shall be consulted in the selection of foreign personnel for education or training at the Institute.

(d) CURRICULUM.—(1) The curriculum of the Institute shall include mandatory instruction for each student, for at least 8 hours, on human rights, the rule of law, due process, civilian control of the military, and the role of the military in a democratic society.

(2) The curriculum may include instruction and other educational and training activities on the following:

(A) Leadership development.

(B) Counterdrug operations.

(C) Peace support operations.

(D) Disaster relief.

(E) Any other matter that the Secretary determines appropriate.

(e) BOARD OF VISITORS.—(1) There shall be a Board of Visitors for the Institute. The Board shall be composed of the following:

(A) The chairman and ranking minority member of the Committee on Armed Services of the Senate, or a designee of either of them.

(B) The chairman and ranking minority member of the Committee on Armed Services of the House of Representatives, or a designee of either of them.

(C) Six persons designated by the Secretary of Defense including, to the extent practicable, persons from academia and the religious and human rights communities.

(D) One person designated by the Secretary of State.

(E) The senior military officer responsible for training and doctrine for the Army or, if the Secretary of the Navy or the Secretary of the Air Force is designated as the executive agent of the Secretary of Defense under subsection (a)(2), the senior military officer responsible for training and doctrine for the Navy or Marine Corps or for the Air Force, respectively, or a designee of the senior military officer concerned.

(F) The commanders of the combatant commands having geographic responsibility for the Western Hemisphere, or the designees of those officers.

(2) A vacancy in a position on the Board shall be filled in the same manner as the position was originally filled.

(3) The Board shall meet at least once each year.

(4)(A) The Board shall inquire into the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Institute, other matters relating to the Institute that the

Board decides to consider, and any other matter that the Secretary of Defense determines appropriate.

(B) The Board shall review the curriculum of the Institute to determine whether—

(i) the curriculum complies with applicable United States laws and regulations;

(ii) the curriculum is consistent with United States policy goals toward Latin America and the Caribbean;

(iii) the curriculum adheres to current United States doctrine; and

(iv) the instruction under the curriculum appropriately emphasizes the matters specified in subsection (d)(1).

(5) Not later than 60 days after its annual meeting, the Board shall submit to the Secretary of Defense a written report of its activities and of its views and recommendations pertaining to the Institute.

(6) Members of the Board shall not be compensated by reason of service on the Board.

(7) With the approval of the Secretary of Defense, the Board may accept and use the services of voluntary and uncompensated advisers appropriate to the duties of the Board without regard to section 1342 of title 31.

(8) Members of the Board and advisers whose services are accepted under paragraph (7) shall be allowed travel and transportation expenses, including per diem in lieu of subsistence, while away from their homes or regular places of business in the performance of services for the Board. Allowances under this paragraph shall be computed—

(A) in the case of members of the Board who are officers or employees of the United States, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5; and

(B) in the case of other members of the Board and advisers, as authorized under section 5703 of title 5 for employees serving without pay.

(9) The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14 (relating to termination after two years), shall apply to the Board.

(f) AUTHORITY TO ACCEPT FOREIGN GIFTS AND DONATIONS.—(1) The Secretary of Defense may, on behalf of the Institute, accept foreign gifts or donations in order to defray the costs of, or enhance the operation of, the Institute.

(2) Funds received by the Secretary under paragraph (1) shall be credited to appropriations available for the Department of Defense for the Institute. Funds so credited shall be merged with the appropriations to which credited and shall be available for the Institute for the same purposes and same period as the appropriations with which merged.

(3) The Secretary of Defense shall notify Congress if the total amount of money accepted under paragraph (1) exceeds $1,000,000 in any fiscal year. Any such notice shall list each of the contributors of such money and the amount of each contribution in such fiscal year.

(4) For the purposes of this subsection, a foreign gift or donation is a gift or donation of funds, materials (including research materials), property, or services (including lecture services and faculty services) from a foreign government, a foundation or other charitable organization in a foreign country, or an individual in a foreign country.

(g) FIXED COSTS.—The fixed costs of operating and maintaining the Institute for a fiscal year may be paid from—

(1) any funds available for that fiscal year for operation and maintenance for the executive agent designated under subsection (a)(2); or

(2) if no executive agent is designated under subsection (a)(2), any funds available for that fiscal year for the Department of Defense for operation and maintenance for Defense-wide activities.

(h) TUITION.—Tuition fees charged for persons who attend the Institute may not include the fixed costs of operating and maintaining the Institute.

(i) ANNUAL REPORT.—Not later than March 15 of each year, the Secretary of Defense shall submit to Congress a detailed report on the activities of the Institute during the preceding year. The report shall include a copy of the latest report of the Board of Visitors received by the Secretary under subsection (e)(5), together with any comments of the Secretary on the Board's report. The report shall be prepared in consultation with the Secretary of State.

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§~~2249a~~ 351. Prohibition on providing financial assistance to terrorist countries

(a) PROHIBITION.—Funds available to the Department of Defense may not be obligated or expended to provide financial assistance to—

(1) any country with respect to which the Secretary of State has made a determination under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A));

(2) any country identified in the latest report submitted to Congress under section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f), as providing significant support for international terrorism; or

(3) any other country that, as determined by the President—

(A) grants sanctuary from prosecution to any individual or group that has committed an act of international terrorism; or

(B) otherwise supports international terrorism.

(b) WAIVER.—(1) The President may waive the application of subsection (a) to a country if the President determines—

(A) that it is in the national security interests of the United States to do so; or

(B) that the waiver should be granted for humanitarian reasons.

(2) The President shall—

(A) notify the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives at least 15 days before the waiver takes effect; and

(B) publish a notice of the waiver in the Federal Register.

(c) DEFINITION.—In this section, the term “international terrorism” has the meaning given that term in section 140(d) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(d)).

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§~~2249d~~ 345. Distribution to certain foreign personnel of education and training materials and information technology to enhance military interoperability with the armed forces

(a) DISTRIBUTION AUTHORIZED.—To enhance interoperability between the armed forces and military forces of friendly foreign ~~countries~~ nations, the Secretary of Defense, with the concurrence of the Secretary of State, may—

(1) provide to personnel referred to in subsection (b) electronically-distributed learning content for the education and training of such personnel for the development or enhancement of allied and friendly military and civilian capabilities for multinational operations, including joint exercises and coalition operations; and

(2) provide information technology, including computer software developed for such purpose, but only to the extent necessary to support the use of such learning content for the education and training of such personnel.

(b) AUTHORIZED RECIPIENTS.—The personnel to whom learning content and information technology may be provided under subsection (a) are military and civilian personnel of a friendly foreign government, with the permission of that government.

(c) EDUCATION AND TRAINING.—Any education and training provided under subsection (a) shall include the following:

(1) Internet-based education and training.

(2) Advanced distributed learning and similar Internet learning tools, as well as distributed training and computer-assisted exercises.

(d) APPLICABILITY OF EXPORT CONTROL REGIMES.—The provision of learning content and information technology under this section shall be subject to the provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.) and any other export control regime under law relating to the transfer of military technology to foreign ~~nations~~ countries.

(e) GUIDANCE ON UTILIZATION OF AUTHORITY.—

(1) GUIDANCE REQUIRED.—The Secretary of Defense shall develop and issue guidance on the procedures for the use of the authority in this section.

(2) MODIFICATION.—If the Secretary modifies the guidance issued under paragraph (1), the Secretary shall submit to the appropriate committees of Congress a report setting forth the modified guidance not later than 30 days after the date of such modification.

(f) ANNUAL REPORT.—

(1) REPORT REQUIRED.—Not later than October 31 following each fiscal year in which the authority in this section is used, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the exercise of the authority during such fiscal year.

(2) ELEMENTS.—Each report under paragraph (1) shall include, for the fiscal year covered by such report, the following:

(A) A statement of the recipients of learning content and information technology provided under this section.

(B) A description of the type, quantity, and value of the learning content and information technology provided under this section.

~~(g) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term "appropriate committees of Congress" means—~~

~~(1) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and~~

~~(2) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.~~

§~~2249e~~ 352. Prohibition on use of funds for assistance to units of foreign security forces that have committed a gross violation of human rights

(a) IN GENERAL.—(1) Of the amounts made available to the Department of Defense, none may be used for any training, equipment, or other assistance for a unit of a foreign security force if the Secretary of Defense has credible information that the unit has committed a gross violation of human rights.

(2) The Secretary of Defense shall, in consultation with the Secretary of State, ensure that prior to a decision to provide any training, equipment, or other assistance to a unit of a foreign security force full consideration is given to any credible information available to the Department of State relating to human rights violations by such unit.

(b) EXCEPTION.—The prohibition in subsection (a)(1) shall not apply if the Secretary of Defense, after consultation with the Secretary of State, determines that the government of such country has taken all necessary corrective steps, or if the equipment or other assistance is necessary to assist in disaster relief operations or other humanitarian or national security emergencies.

(c) WAIVER.—The Secretary of Defense, after consultation with the Secretary of State, may waive the prohibition in subsection (a)(1) if the Secretary determines that the waiver is required by extraordinary circumstances.

(d) PROCEDURES.—The Secretary of Defense shall establish, and periodically update, procedures to ensure that any information in the possession of the Department of Defense about gross violations of human rights by units of foreign security forces is shared on a timely basis with the Department of State.

(e) REPORT.—Not later than 15 days after the application of any exception under subsection (b) or the exercise of any waiver under subsection (c), the Secretary of Defense shall submit to the appropriate committees of Congress a report—

(1) in the case of an exception under subsection (b), providing notice of the use of the exception and stating the grounds for the exception; and

(2) in the case of a waiver under subsection (c), describing—

(A) the information relating to the gross violation of human rights;

(B) the extraordinary circumstances that necessitate the waiver;

(C) the purpose and duration of the training, equipment, or other assistance; and

(D) the United States forces and the foreign security force unit involved.

~~(f) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term "appropriate committees of Congress" means—~~

~~(1) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and~~

~~(2) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.~~

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§~~2350m~~ 343. Participation in multinational military centers of excellence

(a) PARTICIPATION AUTHORIZED.—The Secretary of Defense may, with the concurrence of the Secretary of State, authorize the participation of members of the armed forces and Department of Defense civilian personnel in any multinational military center of excellence for purposes of—

(1) enhancing the ability of military forces and civilian personnel of the nations participating in such center to engage in joint exercises or coalition or international military operations; or

(2) improving interoperability between the armed forces and the military forces of friendly foreign nations.

(b) MEMORANDUM OF UNDERSTANDING.—(1) The participation of members of the armed forces or Department of Defense civilian personnel in a multinational military center of excellence under subsection (a) shall be in accordance with the terms of one or more memoranda of understanding entered into by the Secretary of Defense, with the concurrence of the Secretary of State, and the foreign nation or nations concerned.

(2) If Department of Defense facilities, equipment, or funds are used to support a multinational military center of excellence under subsection (a), the memoranda of understanding under paragraph (1) with respect to that center shall provide details of any cost-sharing arrangement or other funding arrangement.

(c) AVAILABILITY OF APPROPRIATED FUNDS.—(1) Funds appropriated to the Department of Defense for operation and maintenance are available as follows:

(A) To pay the United States share of the operating expenses of any multinational military center of excellence in which the United States participates under this section.

(B) To pay the costs of the participation of members of the armed forces and Department of Defense civilian personnel in multinational military centers of excellence under this section, including the costs of expenses of such participants.

(2) No funds may be used under this section to fund the pay or salaries of members of the armed forces and Department of Defense civilian personnel who participate in multinational military centers of excellence under this section.

(d) USE OF DEPARTMENT OF DEFENSE FACILITIES AND EQUIPMENT.—Facilities and equipment of the Department of Defense may be used for purposes of the support of multinational military centers of excellence under this section that are hosted by the Department.

(e) ANNUAL REPORTS ON USE OF AUTHORITY.—(1) Not later than October 31 each year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the use of the authority in this section during the preceding fiscal year.

(2) Each report required by paragraph (1) shall include, for the fiscal year covered by such report, the following:

(A) A detailed description of the participation of the Department of Defense, and of members of the armed forces and civilian personnel of the Department, in multinational military centers of excellence under the authority of this section.

(B) For each multinational military center of excellence in which the Department of Defense, or members of the armed forces or civilian personnel of the Department, so participated—

(i) a description of such multinational military center of excellence;

(ii) a description of the activities participated in by the Department, or by members of the armed forces or civilian personnel of the Department; and

(iii) a statement of the costs of the Department for such participation, including—

(I) a statement of the United States share of the expenses of such center and a statement of the percentage of the United States share of the expenses of such center to the total expenses of such center; and

(II) a statement of the amount of such costs (including a separate statement of the amount of costs paid for under the authority of this section by category of costs).

(f) MULTINATIONAL MILITARY CENTER OF EXCELLENCE DEFINED.—In this section, the term "multinational military center of excellence" means an entity sponsored by one or more nations that is accredited and approved by the Military Committee of the North Atlantic Treaty Organization (NATO) as offering recognized expertise and experience to personnel participating in the activities of such entity for the benefit of NATO by providing such personnel opportunities to—

(1) enhance education and training;

(2) improve interoperability and capabilities;

(3) assist in the development of doctrine; and

(4) validate concepts through experimentation.

* * * * * * *

§347. Aviation Leadership Program

(a) [10 USC 9381] ESTABLISHMENT OF PROGRAM.— Under regulations prescribed by the Secretary of Defense, the Secretary of the Air Force may establish and maintain an Aviation Leadership Program to provide undergraduate pilot training and necessary related training to personnel of the air forces of friendly, developing foreign countries. Training under this section shall include language training and programs to promote better awareness and understanding of the democratic institutions and social framework of the United States.

(b) [10 USC 9382] SUPPLIES AND CLOTHING.—(1) The Secretary of the Air Force may, under such conditions as the Secretary may prescribe, provide to a person receiving training under this section—

(A) transportation incident to the training;

(B) supplies and equipment to be used during the training;

(C) flight clothing and other special clothing required for the training; and

(D) billeting, food, and health services.

"(2) The Secretary of the Air Force may authorize such expenditures from the appropriations of the Air Force as the Secretary considers necessary for the efficient and effective maintenance of the Program in accordance with this section.

(c) [10 USC 9383] ALLOWANCES.—The Secretary of the Air Force may pay to a person receiving training under this section a living allowance at a rate to be prescribed by the Secretary, taking into account the amount of living allowances authorized for a member of the armed forces under similar circumstances.

~~CHAPTER 905—AVIATION LEADERSHIP PROGRAM~~

~~Sec.~~
~~9381.Establishment of program.~~
~~9382.Supplies and clothing.~~
~~9383.Allowances.~~

~~§9381. Establishment of program~~

~~Under regulations prescribed by the Secretary of Defense, the Secretary of the Air Force may establish and maintain an Aviation Leadership Program to provide undergraduate pilot training and necessary related training to personnel of the air forces of friendly, less-developed foreign nations. Training under this chapter shall include language training and programs to promote better awareness and understanding of the democratic institutions and social framework of the United States.~~

~~§9382. Supplies and clothing~~

~~(a) The Secretary of the Air Force may, under such conditions as the Secretary may prescribe, provide to a person receiving training under this chapter—~~

~~(1) transportation incident to the training;~~

~~(2) supplies and equipment to be used during the training;~~

~~(3) flight clothing and other special clothing required for the training; and~~

~~(4) billeting, food, and health services.~~

(b) The Secretary of the Air Force may authorize such expenditures from the appropriations of the Air Force as the Secretary considers necessary for the efficient and effective maintenance of the Program in accordance with this chapter.

§9383. Allowances

The Secretary of the Air Force may pay to a person receiving training under this chapter a living allowance at a rate to be prescribed by the Secretary, taking into account the amount of living allowances authorized for a member of the armed forces under similar circumstances.

* * * * * *

National Defense Authorization Act for Fiscal Year 1997
(Public Law 104-201; 10 U.S.C. 113 note)

SEC. 1065. GEORGE C. MARSHALL EUROPEAN CENTER FOR STRATEGIC SECURITY STUDIES.

(a) MARSHALL CENTER PARTICIPATION BY FOREIGN NATIONS.—Notwithstanding any other provision of law, the Secretary of Defense may authorize participation by a European or Eurasian nation in Marshall Center programs if the Secretary determines, after consultation with the Secretary of State, that such participation is in the national interest of the United States.

(b) EXEMPTIONS FOR MEMBERS OF MARSHALL CENTER BOARD OF VISITORS FROM CERTAIN REQUIREMENTS.—(1) In the case of any person invited to serve without compensation on the Marshall Center Board of Visitors, the Secretary of Defense may waive any requirement for financial disclosure that would otherwise apply to that person solely by reason of service on such Board.

(2) Notwithstanding any other provision of law, a member of the Marshall Center Board of Visitors may not be required to register as an agent of a foreign government solely by reason of service as a member of the Board.

(3) Notwithstanding section 219 of title 18, United States Code, a non-United States citizen may serve on the Marshall Center Board of Visitors even though registered as a foreign agent.

National Defense Authorization Act for Fiscal Year 1995
(Public Law 103-337; 10 U.S.C. 113 note)

SEC. 1306. GEORGE C. MARSHALL EUROPEAN CENTER FOR SECURITY STUDIES.

(a) WAIVER OF CHARGES.—The Secretary of Defense may waive reimbursement of the costs of conferences, seminars, courses of instruction, or similar educational activities of the George C. Marshall European Center for Security Studies for military officers and civilian officials from states located in Europe or the territory of the former Soviet Union if the Secretary

determines that attendance by such personnel without reimbursement is in the national security interest of the United States.

(b) SOURCE OF FUNDS.—Costs for which reimbursement is waived pursuant to subsection (a) shall be paid from appropriations available for the Center.

Duncan Hunter National Defense Authorization Act for Fiscal Year 2009
(Public Law 110-417; 10 U.S.C. 184 note)

SEC. 941. ENHANCEMENT OF AUTHORITIES RELATING TO DEPARTMENT OF DEFENSE REGIONAL CENTERS FOR SECURITY STUDIES.

(a) ***

(b) TEMPORARY WAIVER OF REIMBURSEMENT OF COSTS OF ACTIVITIES FOR NONGOVERNMENTAL PERSONNEL.—

(1) AUTHORITY FOR TEMPORARY WAIVER.—In fiscal years 2009 through 2019, the Secretary of Defense may, with the concurrence of the Secretary of State, waive reimbursement otherwise required under subsection (f) of section 184 of title 10, United States Code, of the costs of activities of Regional Centers under such section for personnel of nongovernmental and international organizations who participate in activities of the Regional Centers that enhance cooperation of nongovernmental organizations and international organizations with United States forces if the Secretary of Defense determines that attendance of such personnel without reimbursement is in the national security interests of the United States.

(2) LIMITATION.—The amount of reimbursement that may be waived under paragraph (1) in any fiscal year may not exceed $1,000,000.

(3) ANNUAL REPORT.—The Secretary of Defense shall include in the annual report under [former] section 184(h) of title 10, United States Code, in each year through 2013 information on the attendance of personnel of nongovernmental and international organizations in activities of the Regional Centers during the preceding fiscal year for which a waiver of reimbursement was made under paragraph (1), including information on the costs incurred by the United States for the participation of personnel of each nongovernmental or international organization that so attended.

Department of Defense Appropriations Act, 2003
(Public Law 107-248;10 U.S.C. prec. 2161 note)

SEC. 8073. During the current fiscal year and hereafter, the Secretary of Defense may waive reimbursement of the cost of conferences, seminars, courses of instruction, or similar educational activities of the Daniel K. Inouye Asia-Pacific Center for Security Studies for military officers and civilian officials of foreign nations if the Secretary determines that attendance by such personnel, without reimbursement, is in the national security interest of the United States: *Provided*, That costs for which reimbursement is waived pursuant to this section shall be paid from appropriations available for the Asia-Pacific Center.

———————-

Section 1081 of the National Defense Authorization Act for Fiscal Year 2012
(Public Law 112-81; 10 U.S.C. 168 note)

[NOTE: This section would be transferred to the new chapter 16 as a new section 333 with no change other than the section heading, as shown immediately below, the date change in subsection (c)(1), and the deletion of subsections (e) and (f).]

~~**SEC. 1081. DEFENSE INSTITUTION CAPACITY BUILDING PROGRAM.**~~

§333. Friendly foreign countries; international and regional organizations: defense institution capacity building

(a) MINISTRY OF DEFENSE ADVISOR AUTHORITY.—The Secretary of Defense may, with the concurrence of the Secretary of State, carry out a program to assign civilian employees of the Department of Defense as advisors to the ministries of defense (or security agencies serving a similar defense function) of foreign countries or regional organizations with security missions in order to—

(1) provide institutional, ministerial-level advice, and other training to personnel of the ministry or regional organization to which assigned in support of stabilization or post-conflict activities; or

(2) assist such ministry or regional organization in building core institutional capacity, competencies, and capabilities to manage defense-related processes.

(b) TRAINING OF PERSONNEL OF FOREIGN MINISTRIES WITH SECURITY MISSIONS.—

(1) IN GENERAL.—The Secretary of Defense may, with the concurrence of the Secretary of State, carry out a program to provide training and associated training support services to personnel of foreign ministries of defense (or ministries with security force oversight) or regional organizations with security missions—

(A) for the purpose of—

(i) enhancing civilian oversight of foreign security forces;

(ii) establishing responsible defense governance and internal controls in order to help build effective, transparent, and accountable defense institutions;

(iii) assessing organizational weaknesses and establishing a roadmap for addressing shortfalls; and

(iv) enhancing ministerial, general or joint staff, or service level core management competencies; and

(B) for such other purposes as the Secretary considers appropriate, consistent with the authority in subsection (a).

(2) NOTICE TO CONGRESS.—Each fiscal year quarter, the Secretary of Defense shall submit to the appropriate committees of Congress a report on activities under the program under paragraph (1) during the preceding fiscal year quarter. Each report shall include, for the fiscal year quarter covered by such report, the following:

(A) A list of activities under the program.

(B) A list of any organization described in paragraph (1) to which the Secretary assigned employees under the program, including the number of such employees so assigned, the duration of each assignment, a brief description of each assigned employee's activities, and a statement of the cost of each assignment.

(C) A comprehensive justification of any activities conducted pursuant to paragraph (1)(B).

(c) TERMINATION OF AUTHORITY.—

(1) IN GENERAL.—The authority in this section terminates at the close of December 31, ~~2017~~ **2019**.

(2) CONTINUATION OF ASSIGNMENTS.—Any assignment of a civilian employee under subsection (a) before the date specified in paragraph (1) may continue after that date, but only using funds available for a fiscal year ending on or before that date.

(d) CONGRESSIONAL NOTICE.—Not later than 15 days before assigning a civilian employee of the Department of Defense as an advisor to a regional organization with a security mission under subsection (a), the Secretary shall submit to the appropriate committees of Congress a notification of such assignment. Such a notification shall include each of the following:

(1) A statement of the intent of the Secretary to assign the employee as an advisor to the regional organization.

(2) The name of the regional organization and the location and duration of the assignment.

(3) A description of the assignment, including a description of the training or assistance proposed to be provided to the regional organization, the justification for the assignment, a description of the unique capabilities the employee can provide to the regional organization, and a description of how the assignment serves the national security interests of the United States.

(4) Any other information relating to the assignment that the Secretary of Defense considers appropriate.

(e) ANNUAL REPORT.—Not later than December 30 each year through 2017, the Secretary of Defense shall submit to the appropriate committees of Congress a report on activities under the program under subsection (a) during the preceding fiscal year. Each report shall include, for the fiscal year covered by such report, the following:

(1) A list of the defense ministries and regional organizations with security missions to which civilian employees were assigned under the program.

(2) A statement of the number of such employees so assigned.

(3) A statement of the duration of the various assignments of such employees.

(4) A brief description of the activities carried out by such employees pursuant to such assignments.

(5) A description of the criteria used to select the defense ministries and regional organizations with security missions identified in paragraph (1) and the civilian employees so assigned.

(6) A statement of the cost of each such assignment.

(7) Recommendations, if any, about changes to the authority, including an assessment of whether expanding the program authority to include assignments to bilateral, regional, or multilateral international security organizations would advance the national security interests of the United States.

~~(f) COMPTROLLER GENERAL REPORT.—Not later than December 31, 2014, the Comptroller General of the United States shall submit to the committees of Congress specified in subsection (d) a report setting forth an assessment of the effectiveness of the advisory services provided by civilian employees assigned under the program under subsection (a) as of the date of the report in meeting the purposes of the program.~~

~~(g) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term "appropriate committees of Congress" means—~~

~~(1) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and~~

~~(2) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.~~

Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015

(Public Law 113-291; 10 U.S.C. 9411 note)

[NOTE: This section would be transferred to the new chapter 16 as a new section 349 with no change other than the section heading, as shown immediately below]

~~**SEC. 1268. INTER-EUROPEAN AIR FORCES ACADEMY.**~~

§349. Inter-European Air Forces Academy

(a) OPERATION.—The Secretary of the Air Force may operate the Air Force education and training facility known as the Inter-European Air Forces Academy (in this section referred to as the "Academy'").

(b) PURPOSE.—The purpose of the Academy shall be to provide military education and training to military personnel of countries that are members of the North Atlantic Treaty Organization or signatories to the Partnership for Peace Framework Documents.

(c) LIMITATIONS.—

(1) CONCURRENCE OF SECRETARY OF STATE.—Military personnel of a country may be provided education and training under this section only with the concurrence of the Secretary of State.

(2) ASSISTANCE OTHERWISE PROHIBITED BY LAW.—Education and training may not be provided under this section to the military personnel of any country that is otherwise prohibited from receiving such type of assistance under any other provision of law.

(d) SUPPLIES AND CLOTHING.—The Secretary of the Air Force may, under such conditions as the Secretary may prescribe, provide to a person receiving education and training under this section the
following:

(1) Transportation incident to such education and training.

(2) Supplies and equipment to be used during such education and training.

(3) Billeting, food, and health services in connection with the receipt of such education and training.

(e) LIVING ALLOWANCE.—The Secretary of the Air Force may pay to a person receiving education and training under this section a living allowance at a rate to be prescribed by the Secretary, taking into account the rates of living allowances authorized for a member of the Armed Forces under similar circumstances.

(f) FUNDING.—Amounts for the operations and maintenance of the Academy, and for the provision of education and training through the Academy, may be paid from funds available for the Air Force for operation and maintenance.

(g) ANNUAL REPORTS.—

(1) IN GENERAL.—Not later than 60 days after the end of each fiscal year in which the Secretary of the Air Force operates the Academy pursuant to this section, the Secretary shall submit to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a report on the operations of the Academy during such fiscal year.

(2) ELEMENTS.—Each report under this subsection shall set forth, for the fiscal year covered by such report, the following:

(A) A description of the operations of the Academy, including a description of the education and training courses provided under this section.

(B) A summary of the number of individuals receiving education and training through the Academy, set forth by country of origin and education or training provided.

(C) The amount paid by the Secretary for the operations and maintenance of the Academy.

(D) The amounts paid by the Secretary under subsections (d) and (e) in connection with the provision of education and training through the Academy.

(E) Any other matters the Secretary determines to be appropriate.

(h) EXPIRATION.—The authority in subsection (a) shall expire on September 30, 2019.

Section 1202 would combine existing security cooperation authorities permitting the exchange of military and defense personnel with allies of the United States and other friendly foreign counties. This proposal would also make permanent the authority for reciprocal and non-reciprocal exchanges and would authorize exchanges with regional security organizations and international organizations.

This proposal is part of a package of Fiscal Year (FY) 2017 security cooperation authorities reform proposals sponsored by the Under Secretary of Defense for Policy intended to consolidate and simplify Title 10 authorities under a new Chapter 16 for security cooperation.

Several similar authorities in title 10, United States Code, permit the exchange of defense personnel between the United States and allies of the United States or other friendly foreign countries. These include: Military-to-Military contacts and comparable activities (10 U.S.C. 168); Agreements for Exchange of Defense Personnel between The United States and Foreign Countries (P.L. 104-201 Section 1082); Authority for Non-Reciprocal Exchanges of Defense Personnel between The United States and Foreign Countries (P.L. 111-84 Section 1207 – will expire December 31, 2021). These authorities would be consolidated and made permanent under this single proposed Section 311.

The consolidation of authorities under this proposal would clarify what is and is not permitted under current exchange authorities. The single authority would be easier for the security cooperation workforce to understand and execute.

The Department of Defense (DoD) would benefit from the permanent authority to conduct non-reciprocal exchanges. There are situations where it is in DoD's interest to place DoD personnel into positions in foreign defense and military organizations, but for which there is no clear benefit from placing foreign counterparts within DoD or military services. DoD has a much larger pool of highly qualified individuals to draw from in support of such exchanges than do most foreign partners. Some countries and organizations may struggle to find an individual available for an exchange who meets the standards necessary to provide benefit to DoD. In addition, requiring a reciprocal exchange of personnel could, in some cases, require a foreign partner to pull a key individual from a vital role in the home ministry or regional organization. Nevertheless, DoD should retain the ability to emplace DoD personnel into foreign defense and military organizations in situations where doing so advances DoD objectives, regardless of the foreign partner's ability to act reciprocally.

The proposal would also authorize DoD to conduct exchanges, both reciprocal and non-reciprocal, with regional and international security organizations and alliance security organizations, thereby enabling DoD to provide targeted support to such organizations, to influence their strategic direction, and to expose their staffs to DoD strategy, organization, and processes. Regional organizations, such as the Gulf Cooperation Council (GCC), are increasingly involved in undertaking collective military action, providing direction to peacekeeping and security operations, and maintaining regional security architectures such as cooperative missile defense. International organizations, such as the United Nations, would benefit from the expertise and influence of DoD professionals in key positions within the organization. Conducting exchanges that enable DoD personnel to participate in the activities of these organizations could prove advantageous to shaping operations, providing guidance to planners and decision-makers, and influencing the development of the institution in ways that support U.S. security interests. Organizations such as the Association of Southeast Asian Nations (ASEAN) are developing multilateral frameworks to take on regional security

challenges. Exchanges conducted with these nascent security organizations can shape the development and growth of the security organs to support U.S. regional security objectives.

Nothing in this proposed language compels DoD to place reciprocal or non-reciprocal exchange personnel when there is no clear benefit or advantage to be gained by DoD from the exchange.

A separate authority to provide staff officers and financial contributions to EUROCORPS (United States Participation in Headquarters EUROCORPS (P.L. 112-239 Section 1275)) is not included in this proposal. Although Section 1275's staffing provisions are similar to activities addressed by this proposal, its authority to make financial contributions to support EUROCORPS headquarters does not fit within this draft legislation.

Budget Implications: The table below details resource requirements associated with this proposal. The resources reflected in the table below are funded within the FY2017 President's Budget. Services make limited use of exchange authority (Sec 1082) as reflected in the table below. The budgetary impact of non-reciprocal exchanges are deemed to be minimal by all Services.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	1.61	1.80	1.84	1.85	1.87	Operation and Maintenance, Army	03	323	0804752A
USAF	1.747	1.729	1.741	1.753	1.766	Operation and Maintenance, Air Force	04	042G	91212F
Navy	Navy does not intend to use this authority which would have been funded in the following account: Operation and Maintenance, Navy.								
DoD	Defense-Wide Agencies do not intend to use this authority, which would have been funded in the following account: Operation and Maintenance, Defense-Wide.								

Changes to Existing Law: This proposal would make the following changes to existing law:
(1) Transfer section 1082 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201) to title 10, United States Code, as a new section 311, with the changes shown below.
(2) Repeal section 1207 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 10 U.S.C. 168 note), set out below.

National Defense Authorization Act for Fiscal Year 1997

(Public Law 104-201; 10 U.S.C. 168 note)

~~**SEC. 1082. AGREEMENTS FOR EXCHANGE OF DEFENSE PERSONNEL BETWEEN THE UNITED STATES AND FOREIGN COUNTRIES.**~~

TITLE 10, UNITED STATES CODE

§311. Exchange of defense personnel between United States and friendly foreign countries: authority

(a) AUTHORITY TO ENTER INTO INTERNATIONAL EXCHANGE AGREEMENTS.—(1) The Secretary of Defense may enter into international defense personnel exchange agreements. **Exchanges of personnel under such an agreement are subject to paragraph (3).**

(2) For purposes of this section, an international defense personnel exchange agreement is an agreement with the government of ~~an ally of the United States or another~~ **a** friendly foreign country**, or with an international or regional security organization,** for the **reciprocal or non-reciprocal** exchange of —

(A) ~~military~~ **members of the armed forces** and civilian personnel of the Department of Defense; and

(B) military and civilian personnel of the defense ministry of that foreign government **or personnel of a non-defense security ministry of that foreign government or personnel of that international or regional security organization, as the case may be**.

(3) SECRETARY OF STATE CONCURRENCE.—An exchange of personnel under an international defense personnel exchange agreement may only be made with the concurrence of the Secretary to State to the extent the exchange is with—

(A) a non-defense security ministry of a foreign government; or

(B) an international or regional security organization.

(b) ASSIGNMENT OF PERSONNEL.—(1) Pursuant to an international defense personnel exchange agreement, personnel of the defense ministry of a foreign government may be assigned to positions in the Department of Defense and personnel of the Department of Defense may be assigned to positions in the defense ministry of such foreign government. Positions to which exchanged personnel are assigned may include positions of instructors.

(2) An agreement for the exchange of personnel engaged in research and development activities may provide for assignment of Department of Defense personnel to positions in private industry that support the defense ministry of the host foreign government **subject to the concurrence of the Secretary of State**.

(3) An individual may not be assigned to a position pursuant to an international defense personnel exchange agreement unless the assignment is acceptable to both governments.

(c) RECIPROCITY OF PERSONNEL QUALIFICATIONS REQUIRED.~~— Each government shall be required under~~ **In the case of** an international defense personnel exchange agreement **that provides for reciprocal exchanges, each government shall be required** to provide personnel with qualifications, training, and skills that are essentially equal to those of the personnel provided by the other government.

(d) PAYMENT OF PERSONNEL COSTS.—(1) Each government shall pay the salary, per diem, cost of living, travel costs, cost of language or other training, and other costs for its own personnel in accordance with the applicable laws and regulations of such government.

(2) Paragraph (1) does not apply to the following costs:

(A) The cost of temporary duty directed by the host government.

(B) The cost of training programs conducted to familiarize, orient, or certify exchanged personnel regarding unique aspects of the assignments of the exchanged personnel.

(C) Costs incident to the use of the facilities of the host government in the performance of assigned duties.

(3) A civilian employee of the Department of Defense shall be considered, for all purposes, to remain an employee of the Department during the exchange assignment.

(e) PROHIBITED CONDITIONS.—No personnel exchanged pursuant to an agreement under this section may take or be required to take an oath of allegiance to the host country or to hold an official capacity in the government of such country.

(f) RELATIONSHIP TO OTHER AUTHORITY.—The requirements in subsections (c) and (d) shall apply in the exercise of any authority of the Secretaries of the military departments to enter into an agreement with the government of a foreign country to provide for the exchange of members of the armed forces and military personnel of the **defense or security ministry of that** foreign country. The Secretary of Defense may prescribe regulations for the application of such subsections in the exercise of such authority.

Section 1207 of the National Defense Authorization Act for Fiscal Year 2010
(Public Law 111-84; 10 U.S.C. 168 note)

~~**SEC. 1207. AUTHORITY FOR NON-RECIPROCAL EXCHANGES OF DEFENSE PERSONNEL BETWEEN THE UNITED STATES AND FOREIGN COUNTRIES**~~

~~(a) AUTHORITY TO ENTER INTO NON-RECIPROCAL INTERNATIONAL EXCHANGE AGREEMENTS.—~~

~~(1) IN GENERAL.—The Secretary of Defense may enter into non-reciprocal international defense personnel exchange agreements.~~

~~(2) International defense personnel exchange agreements defined. For purposes of this section, an international defense personnel exchange agreement is an agreement with the government of an ally of the United States or another friendly foreign country for the exchange of military and civilian personnel of the defense ministry of that foreign government.~~

~~(b) ASSIGNMENT OF PERSONNEL.—~~

~~(1) IN GENERAL.—Pursuant to a non-reciprocal international defense personnel exchange agreement, personnel of the defense ministry of a foreign government may be assigned to positions in the Department of Defense.~~

~~(2) MUTUAL AGREEMENT REQUIRED.—An individual may not be assigned to a position pursuant to a non-reciprocal international defense personnel exchange agreement unless the assignment is acceptable to both governments.~~

~~(c) PAYMENT OF PERSONNEL COSTS.—~~

~~(1) IN GENERAL.—The foreign government with which the United States has entered into a non-reciprocal international defense personnel exchange agreement shall pay the salary, per diem, cost of living, travel costs, cost of language or other training, and other costs for its personnel under such agreement in accordance with the applicable laws and regulations of such government.~~

~~(2) EXCLUDED COSTS.—Paragraph (1) does not apply to the following costs:~~

~~(A) The cost of training programs conducted to familiarize, orient, or certify exchanged personnel regarding unique aspects of the assignments of the exchanged personnel.~~

~~(B) Costs incident to the use of facilities of the United States Government in the performance of assigned duties.~~

~~(C) The cost of temporary duty of the exchanged personnel directed by the United States Government.~~

~~(d) PROHIBITED CONDITIONS.—No personnel exchanged pursuant to a non-reciprocal agreement under this section may take or be required to take an oath of allegiance or to hold an official capacity in the government.~~

~~(e) REPORT.—~~

~~(1) IN GENERAL.—Not later than 90 days after the end of the fiscal year in which the authority in subsection (a) has been exercised, the Secretary of Defense shall submit to the appropriate congressional committees a report on the use of the authority through the end of such fiscal year.~~

~~(2) MATTERS TO BE INCLUDED.—The report required under paragraph (1) shall include the number of non-reciprocal international defense personnel exchange agreements, the number of personnel assigned pursuant to such agreements, the Department of Defense component to which the personnel have been assigned, the duty title of each assignment, and the countries with which the agreements have been concluded.~~

~~(3) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED. In this subsection, the term "appropriate congressional committees" means—~~

~~(A) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives; and~~

~~(B) the Committee on Armed Services and the Committee on Foreign Relations of the Senate.~~

~~(f) DURATION OF AUTHORITY.—The authority under this section shall expire on December 31, 2021.~~

Section 1203 would consolidate similar authorities permitting the payment of personnel expenses of allied or partner countries during theater security cooperation activities, and make aspects of the authority to do so available globally.

This proposal is part of a package of Fiscal Year (FY) 2017 security cooperation authorities reform proposals sponsored by the Under Secretary of Defense for Policy intended to consolidate and simplify Title 10 authorities under a new Chapter 16 for security cooperation.

Four similar authorities in title 10, United States Code, permit the payment of personnel expenses:

1. SEC. 1050. Latin American cooperation: payment of personnel expenses;
2. SEC. 1050a. African cooperation: payment of personnel expenses;
3. SEC. 1051. Multilateral, bilateral, or regional cooperation programs: payment of personnel expenses; and
4. SEC. 1051a. Liaison officers of certain foreign nations; administrative services and support; travel, subsistence, medical care, and other personal expenses.

This proposal would consolidate these authorities while preserving the key operative elements of each authority.

Consolidation of these authorities would provide a single authority for use by the Department of Defense (DoD) to pay for the personnel expenses of friendly countries' defense, security, or other personnel when doing so is advantageous to DoD and supports theater cooperation. The single authority enables reimbursement of expenses that may otherwise prevent partners from attending or participating in military-to-military activities, as well as the expenses necessary for foreign liaison officers to serve in U.S. commands.

The inclusion of non-defense personnel may include security personnel from national agencies or departments as well as personnel whose participation is important for the success of an event or activity. For example, activities focused on the DoD response in support of humanitarian assistance and disaster relief may not be successful without the inclusion of officials from the ministries responsible for public health and emergency management and representatives from non-governmental organizations helping to coordinate the response. In cases where non-defense personnel are included, it makes sense to inform the State Department of DoD's intent to include these people and organizations to ensure that DoD activities are fully aligned with and informed by State and other agency efforts.

As 10 U.S.C. 1051 currently authorizes for liaison officers, the proposed legislation would define what expenses are and are not covered, place limits on amounts that may be paid to a liaison officer, and authorize the provision of administrative services and support. The proposed legislation would authorize the payment of travel and subsistence, personal expenses, and medical expenses (in certain circumstances). This proposal does not require DoD to cover expenses for a liaison officer from a country that should be financially capable of covering those expenses itself.

The single authority would improve efficiency and effectiveness of security cooperation and execution by establishing a common authorities framework for the payment of necessary expenses for bilateral, multilateral, or regional military to military cooperation. In doing so, it would offer security cooperation planners clarity on activities that are authorized and improve the coherence of security cooperation planning by streamlining policy and legal reviews of proposed activities.

The proposal would require the Secretary to issue regulations to ensure that the authority is used exclusively to fund the participation of personnel from countries otherwise unable to pay for personnel expenses, absent exceptional circumstances. The proposal intends to preserve latitude for Combatant Commands to make prioritization decisions, in select cases, that may authorize reimbursement of some expenses for countries whose participation is vital to military to military activities but which may exceed by small margins the developing country threshold. Combatant commands and other commands making use of this authority are expected to justify their prioritization of the use of funds to the Chairman of the Joint Chiefs of Staff who will be responsible for implementing this authority, establishing rules governing implementation, and providing oversight of the uses of this authority.

Budget Implications: The tables below detail resource requirements associated with this proposal. The resources reflected in the tables below are funded within the FY2017 President's Budget.

For 10 U.S.C. 1050 (Latin American Cooperation): Army and Air Force program for this authority. Their planned funding levels are outlined in the table below.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	1.32	1.47	1.525	1.556	1.414	Operation and Maintenance, Army	04	442	1001010A
USAF	0.2	0.2	0.2	0.2	0.2	Operation and Maintenance, Air Force	04	44A	A1010F

For 10 U.S.C. 1050a (African Cooperation): Army programs funding for this authority at the levels identified in the Table below.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	1.2	1.2	1.2	1.2	1.2	Operation and Maintenance, Army	01	138	0201109A

For 10 U.S.C. 1051 (Multilateral, bilateral, or regional cooperation programs: payment of personnel expenses): The resources reflected in the table below are funded within the FY2017 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**
Army	1.2	1.2	1.2	1.2	1.2	Operation and Maintenance, Army	01	138	0201109A
Army	31.6	51.1	51.6	52.1	52.7	Operation and Maintenance, Army	01	121	0202214A
Army	.9	.9	.9	1.0	1.0	Operation and Maintenance, Army	01	121	0202218A
	Navy does not intend to use this authority, which would have been funded in the following account: Operation and Maintenance, Navy. Air Force does not intend to use this authority, which would have been funded in the following account: Operation and Maintenance, Air Force.								

For 10 U.S.C. 1051a (Liaison officers): The resources reflected in the table below are funded within the FY2017 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**
Defense	0.9	1.1	1.3	1.5	1.7	Operation and Maintenance, Defense-Wide	01	1PL2	
Navy	6.5	6.5	6.5	6.5	6.5	Operation and Maintenance, Navy	01	1CCM	1001004
USAF	3.7	3.7	3.7	3.7	3.7	Operation and Maintenance, Air Force	04	44A	A1010F
TRANS COM	Transportation Working Capital Fund does not intend to use this authority, which would have been funded from Transportation Working Capital Fund account**.**								

Changes to Existing Law: This proposal would make the following changes to existing law:
(1) Add a new section 312 to the proposed new chapter 16 of title 10, United States Code, as shown in full in the legislative text above.
(2) Amend section 341(as transferred and redesignated by section 1201), as follows.

(3) Repeal current sections 1050, 1050a, and 1051, and 1051a of that title, as follows:

TITLE 10, UNITED STATES CODE

§341. [as transferred and amended by sec. 1201] Regional Centers for Security Studies

(a) IN GENERAL.—The Secretary of Defense shall administer the Department of Defense Regional Centers for Security Studies in accordance with this section as international venues for bilateral and multilateral research, communication, and exchange of ideas involving military and civilian participants.

*** * * * ***

(f) PAYMENT OF COSTS.—(1) Participation in activities of a Regional Center shall be on a reimbursable basis (or by payment in advance), except in a case in which reimbursement is waived in accordance with paragraph (3).

*** * * * ***

(4) Funds accepted for the payment of costs shall be credited to the appropriation then currently available to the Department of Defense for the Regional Center that incurred the costs. Funds so credited shall be merged with the appropriation to which credited and shall be available to that Regional Center for the same purposes and same period as the appropriation with which merged.

(5) Funds available for the payment of personnel expenses under ~~the Latin American cooperation authority set forth in section 1050~~ section 312 of this title are also available for the costs of the operation of the ~~William J. Perry Center for Hemispheric Defense Studies~~ Department of Defense Regional Centers for Security Studies.

(6) Funds available to carry out this section, including funds accepted under paragraph (4) and funds available under paragraph (5), shall be available, to the extent provided in appropriations Acts, for programs and activities under this section that begin in a fiscal year and end in the following fiscal year.

*** * * * ***

~~**§ 1050. Latin American cooperation: payment of personnel expenses**~~

~~The Secretary of Defense or the Secretary of a military department may pay the travel, subsistence, and special compensation of officers and students of Latin American countries and other expenses that the Secretary considers necessary for Latin American cooperation.~~

~~**§ 1050a. African cooperation: payment of personnel expenses**~~

~~The Secretary of Defense or the Secretary of a military department may pay the travel, subsistence, and special compensation of officers and students of African countries and other expenses that the Secretary considers necessary for African cooperation.~~

§1051. Multilateral, bilateral, or regional cooperation programs: payment of personnel expenses

(a) The Secretary of Defense may pay the travel, subsistence, and similar personal expenses of defense personnel of developing countries in connection with the attendance of such personnel at a multilateral, bilateral, or regional conference, seminar, or similar meeting if the Secretary determines that the attendance of such personnel at such conference, seminar, or similar meeting is in the national security interests of the United States.

(b)(1) Except as provided in paragraphs (2) and (3), expenses authorized to be paid under subsection (a) may be paid on behalf of personnel from a developing country only in connection with travel to, from, and within the area of responsibility of the unified combatant command (as such term is defined in section 161(c) of this title) in which the multilateral, bilateral, or regional conference, seminar, or similar meeting for which expenses are authorized is located or in connection with travel to Canada or Mexico.

(2) In a case in which the headquarters of a unified combatant command is located within the United States, expenses authorized to be paid under subsection (a) may be paid in connection with travel of personnel to the United States to attend a multilateral, bilateral, or regional conference, seminar, or similar meeting.

(3) In the case of defense personnel of a developing country that is not a member of the North Atlantic Treaty Organization and that is participating in the Partnership for Peace program of the North Atlantic Treaty Organization (NATO), expenses authorized to be paid under subsection (a) may be paid in connection with travel of personnel to the territory of any of the countries participating in the Partnership for Peace program or the territory of any NATO member country.

(4) Expenses authorized to be paid under subsection (a) may not, in the case of any individual, exceed the amount that would be paid under chapter 7 of title 37 to a member of the armed forces of the United States (of a comparable grade) for authorized travel of a similar nature.

(c) In addition to the expenses authorized to be paid under subsection (a), the Secretary of Defense may pay such other expenses in connection with any such conference, seminar, or similar meeting as the Secretary considers in the national security interests of the United States.

(d) The authority to pay expenses under this section is in addition to the authority to pay certain expenses and compensation of officers and students of Latin American countries under section 1050 of this title.

(e) Funds available to carry out this section shall be available, to the extent provided in appropriations Acts, for programs and activities under this section that begin in a fiscal year and end in the following fiscal year.

§ 1051a. Liaison officers of certain foreign nations; administrative services and support; travel, subsistence, medical care, and other personal expenses

(a) AUTHORITY.—Subject to subsection (d), the Secretary of Defense may provide administrative services and support for the performance of duties by a liaison officer of another nation while the liaison officer is assigned temporarily as follows:

(1)To the headquarters of a combatant command, component command, or subordinate operational command of the United States.

(2)To the Joint Staff.

(b) TRAVEL, SUBSISTENCE, AND MEDICAL CARE EXPENSES.—

(1)The Secretary may pay the expenses specified in paragraph (2) of a liaison officer of a developing country in connection with the assignment of that officer as described in subsection (a), if the assignment is requested by the commander of the combatant command or by the Chairman of the Joint Chiefs of Staff, as appropriate.

(2)Expenses of a liaison officer that may be paid under paragraph (1) in connection with an assignment described in that paragraph are the following:

(A)Travel and subsistence expenses.

(B)Personal expenses directly necessary to carry out the duties of that officer in connection with that assignment.

(C)Expenses for medical care at a civilian medical facility if—

(i)adequate medical care is not available to the liaison officer at a local military medical treatment facility;

(ii)the Secretary determines that payment of such medical expenses is necessary and in the best interests of the United States; and

(iii)medical care is not otherwise available to the liaison officer pursuant to any treaty or other international agreement.

(3)The Secretary may pay the mission-related travel expenses of a liaison officer described in subsection (a) if such travel meets each of the following conditions:

(A)The travel is in support of the national interests of the United States.

(B)The commander of the relevant combatant command or the Chairman of the Joint Chiefs of Staff, as applicable, directs round-trip travel from the assigned location to one or more travel locations.

(c) REIMBURSEMENT.—The Secretary may provide the services and support authorized by subsection (a), and the expenses authorized by subsection with or without reimbursement from (or on behalf of) the recipients. The terms of reimbursement shall be specified in the appropriate agreement used to assign the liaison officer to a combatant command or to the Joint Staff.

(d) LIMITATION AND OVERSIGHT.—

(1)The amount of unreimbursed support for any liaison officer supported under subsection (b)(1) in any fiscal year may not exceed $200,000 (in fiscal year 2014 constant dollars).

(2)The Chairman of the Joint Chiefs of Staff shall be responsible for implementing the authority under this section.

(e) SECRETARY OF STATE COORDINATION.—The authority of the Secretary of Defense to provide administrative services and support under subsection (a) for the performance of duties by

~~a liaison officer of another nation may be exercised only with respect to a liaison officer of another nation whose assignment as described in that subsection is accepted by the Secretary of Defense with the coordination of the Secretary of State.~~

~~(f) DEFINITION.—In this section, the term "administrative services and support" includes base or installation support services, office space, utilities, copying services, fire and police protection, training programs conducted to familiarize, orient, or certify liaison personnel regarding unique aspects of the assignments of the liaison personnel, and computer support.~~

Section 1204 would combine similar authorities for paying for the expenses of partner nations when conducting training for U.S. Armed Forces with the authority for paying the expenses of developing countries when participating in exercises.

This proposal is part of a package of Fiscal Year 2017 security cooperation authorities reform proposals sponsored by the Under Secretary of Defense for Policy intended to consolidate and simplify Title 10 security cooperation authorities in a new Chapter 16 in Title 10.

Two similar authorities permit the payment of expenses for foreign security forces to participate in training that support training objectives for the U.S. Armed Forces: (1) Training of General Purpose Forces of the United States Armed Forces with Military and Security Forces of Friendly Foreign Countries (Section 1203 of P. L. 113-66), and (2) Participation of Developing Countries in Combined Exercises: Payment of Incremental Expenses (10 U.S.C. 2010).

The proposal would permanently codify the Section 1203 authority for general purpose forces to train with military and security forces of friendly foreign countries. It also removes the $10 million cap established in Section 1203.

Consolidation of these authorities would provide a single authority for use by Combatant Commands to train with friendly foreign countries. The single authority would improve efficiency and effectiveness by establishing a standard authorities framework for the inclusion of partner country military and security forces in training events, which would enable coordination and approval processes for such training events to be streamlined.

The proposal would permit training or exercising with military and security forces, but would limit the participation of security forces to national-level forces responsible for security fields in which DoD forces have specific responsibilities and expertise. It may be necessary for DoD to train with national-level police particularly when a country has no military and the national police are the national security forces (e.g., Panama, Costa Rica, and a number of Caribbean countries). Local civilian police are explicitly excluded from this authority.

Section 2010 is currently limited to countries that are considered "developing" countries while Section 1203 does not require means testing. This proposal removes the means testing requirement from the consolidated language to provide greater flexibility in using the consolidated authority. Countries that fall above the developing countries threshold may be strategically important partners that otherwise would not be able to participate in training or exercises without our payment of incremental expenses for their participation. The Baltic states

fall above the developing country threshold and are not eligible for support through Section 2010. The availability of Section 1203 for payment of incremental expenses for exercises with the Balkan states was essential during a period of heightened concerns following Russian annexation of Crimea. The Department will use the authority for countries that cannot reasonably expect to pay for their own participating in these training events.

The Department will apply 10 U.S.C. 2249e, "prohibition on the use of funds for assistance to units of foreign security forces that have committed gross violations of human rights" to training and other assistance provided to a unit of a foreign security force under this proposed legislation consistent with the implementing DoD guidance for the DoD Leahy Law issued by the Secretary of Defense on August 18, 2014.

This proposal would add the authority to pay for small-scale construction, which will be capped at $750,000, to support training and exercises. The dollar amount of the cap applicable to such small-scale construction is to be provided in the definition in section 301(2) of title 10, United States Code, as proposed to be added by OLC #126. This authority could be used to construct a training facility essential for the planned training that would be turned over to the host nation following the training event to aid the friendly forces in sustaining the skills developed during the training. Future training events would then be able to use the facilities, improving long-term outcomes. The limit on the amounts available for small scale construction for an event will ensure that the focus of the program remains training and not the provision of training facilities.

Budget Implications: The table below details resource requirements associated with this proposal. The resources reflected in the table below are funded within the FY2017 President's Budget. Funding for the consolidated proposal consists of funds programmed for 10 U.S.C. 2010 (Developing Countries Combined Exercise Program, or DCCEP) and FY14 NDAA Section 1203 (Training of general purpose forces with military and other security forces of friendly foreign countries).

For 10 U.S.C. 2010 (DCCEP): Army and Navy program for DCCEP at the levels outlines below. Air Force does not program for DCCEP.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	6.4	5.7	7.0	6.2	6.3	Operation and Maintenance, Army	01	138	0201109A
Army	4.5	4.8	4.8	4.9	5.2	Operation and Maintenance, Army	01	138	0201113A
Army	9.2	9.4	9.5	9.7	9.9	Operation and Maintenance, Army	01	138	0201115A

Navy	10.5	10.5	10.5	10.5	10.5	Operation and Maintenance, Navy	01	1CCM	1001004N
USAF	Air Force does not intend to use this authority, which would have been funded in the following account: Operation and Maintenance, Air Force.								

For Section 1203: This is a temporary authority, expiring at the end of FY17, with a cap of $10 million per year. The Army programed funds for FY17 but not beyond because this has been a temporary authority. The proposal removes the $10 million annual cap.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	.1	0	0	0	0	Operation and Maintenance, Army	01	138	0201109A
Navy	Navy does not intend to use this authority, which would have been funded in the following account: Operation and Maintenance, Navy.								
USAF	Air Force does not intend to use this authority, which would have been funded in the following account: Operation and Maintenance, Air Force.								

Changes to Existing Law: This proposal (1) would add a new section 321 to title 10, United States Code, which is shown in full above, and (2) would repeal section 2010 of that title and section 1203 of the National Defense Authorization Act For Fiscal Year 2014 (Public Law 113-66; 10 U.S.C. 2011 note), as follows:

TITLE 10, UNITED STATES CODE

~~**§2010. Participation of developing countries in combined exercises: payment of incremental expenses**~~

~~(a) The Secretary of Defense, after consultation with the Secretary of State, may pay the incremental expenses of a developing country that are incurred by that country as the direct result of participation in a bilateral or multilateral military exercise if -~~

~~(1) the exercise is undertaken primarily to enhance the security interests of the United States; and~~

~~(2) the Secretary of Defense determines that the participation by such country is necessary to the achievement of the fundamental objectives of the exercise and that those objectives cannot be achieved unless the United States provides the incremental expenses incurred by such country.~~

~~(b) The Secretary of Defense shall establish by regulation such accounting procedures as may be necessary to ensure that funds expended under this section are properly expended.~~

(c) Funds available to carry out this section shall be available, to the extent provided in appropriations Acts, for bilateral or multilateral military exercises that begin in a fiscal year and end in the following fiscal year.

(d) In this section, the term "incremental expenses" means the reasonable and proper cost of the goods and services that are consumed by a developing country as a direct result of that country's participation in a bilateral or multilateral military exercise with the United States, including rations, fuel, training ammunition, and transportation. Such term does not include pay, allowances, and other normal costs of such country's personnel.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2014

SEC. 1203. TRAINING OF GENERA PURPOSE FORCES OF THE UNITED STATES ARMED FORCES WITH MILITARY AND OTHER SECURITY FORCES OF FRIENDLY FOREIGN COUNTRIES.

(a) TRAINING AUTHORIZED.—

(1) IN GENERAL.—Under regulations prescribed under subsection (f), general purpose forces of the United States Armed Forces may train with the military forces or other security forces of a friendly foreign country if the Secretary of Defense determines that it is in the national security interests of the United States to do so. Training may be conducted under this section only with the prior approval of the Secretary of Defense.

(2) CONCURRENCE.—Before conducting a training event in or with a foreign country under this subsection, the Secretary of Defense shall seek the concurrence of the Secretary of State in such training event.

(b) TYPES OF TRAINING AUTHORIZED.—Any training conducted by the United States Armed Forces pursuant to subsection (a) shall, to the maximum extent practicable—

(1) support the mission essential tasks for which the training unit providing such training is responsible;

(2) be with a foreign unit or organization with equipment that is functionally similar to such training unit; and

(3) include elements that promote—

(A) observance of and respect for human rights and fundamental freedoms; and

(B) respect for legitimate civilian authority within the foreign country or countries concerned.

(c) AUTHORITY TO PAY EXPENSES.—

(1) IN GENERAL.—The Secretary of a military department or the commander of a combatant command may pay, or authorize payment for, the incremental expenses incurred by a friendly foreign country as the direct result of training with general purpose forces of the United States Armed Forces pursuant to subsection (a).

(2) LIMITATION.—The amount of incremental expenses payable under paragraph (1) in any fiscal year may not exceed $10,000,000.

(d) NOTICE BEFORE COMMENCEMENT OF TRAINING.—The Secretary of Defense shall notify the Committees on Armed Services of the Senate and the House of Representatives not later than 15 days before the commencement of any training event pursuant to subsection (a). The notice on a training event shall include a description of the event and the foreign country or countries involved in the event.

(e) ANNUAL REPORTS TO CONGRESS.—Not later than April 1 of each year following a fiscal year in which training is conducted pursuant to subsection (a), the Secretary of Defense shall submit to the appropriate committees of Congress a report on the training conducted pursuant to that subsection. Each report shall specify the following:

(1) For the fiscal year covered by such report, the following:

(A) Each country in which training was conducted.

(B) The type of training conducted, the duration of such training, and the number of members of the United States Armed Forces involved in such training.

(C) The extent of participation in such training by foreign military forces and other security forces, including the number and service affiliation of foreign military and other security force personnel involved and the physical and financial contribution of each country specified in subparagraph (A) in such training.

(D) The relationship of such training to other overseas training programs conducted by the United States Armed Forces, such as military exercise programs sponsored by the Joint Chiefs of Staff, military exercise programs sponsored by a combatant command, and military training activities sponsored by a military department (including deployments for training, short duration exercises, and other similar unit training events).

(E) A summary of the expenditures under subsection (c) in connection with such training.

(F) A description and assessment of the unique military training benefits for members of the United States Armed Forces involved in such training.

(2) A list of the training events to be conducted during the 12-month period beginning on April 1 of the year in which such report is submitted.

(f) REGULATIONS.—Any training conducted pursuant to subsection (a) shall be conducted under regulations prescribed by the Secretary of Defense for the administration of this section. The regulations shall be prescribed not later than 180 days after the date of the enactment of this Act.

(g) DEFINITIONS.—In this section:

(1) The term ''appropriate committees of Congress'' means—

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

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

~~(2) The term ''incremental expenses'', with respect to a friendly foreign country, means the reasonable and proper costs of rations, fuel, training ammunition, transportation, and other goods and services consumed by such country as a direct result of that country's participation in training conducted pursuant to subsection (a), except that such term does not include pay, allowances, and other normal costs of such country's military or security force personnel.~~

~~(3) The term ''other security forces'' includes national security forces that conduct border and maritime security, but does not include civilian police.~~

~~(h) EXPIRATION.—The authority under this section may not be exercised after September 30, 2017.~~

Section 1205 would consolidate in one section, in a new chapter devoted to security cooperation authorities, multiple existing codified (10 U.S.C. 127d) and temporary authorities (section 1234 of the National Defense Authorization Act [NDAA] for Fiscal Year (FY) 2008 (P.L. 110-181), as amended) relating to the provision of operational support to partners and allies engaged in combined operations with the United States Armed Forces or in military operations that directly support U.S. national security interests.

This proposal is part of a package of security cooperation authorities reform proposals intended to consolidate and simplify Title 10 security cooperation authorities as part of a new Chapter 16 in Title 10.

Existing authorities allow for the provision of logistics support, supplies, and services, as well as equipment loans, to partners and allies. The intent of this legislative proposal remains the same as that of the existing legislation – to encourage and leverage contributions of allies and partners in operations that advance U.S. national security objectives, and to facilitate safe, effective, and efficient interoperability with U.S. forces during combined operations. The authority provided under this proposal is not intended to build partner capacity; rather, it is intended solely to provide logistical and related operational support during specified operations. Other existing authorities, such as Foreign Military Financing (22 U.S.C. 2763) or the Global Train and Equip program (10 U.S.C. 2282), provide tools for building partner capacity where appropriate.

The consolidation achieved through this legislative proposal would enable the Department of Defense (DoD) to respond more rapidly to partner operational shortfalls during time-sensitive military operations. Specifically, this proposed legislation would authorize: 1) support to all potential allies and partners rather than only undeveloped partners; 2) small-scale construction; and 3) support to countries engaged in operations that directly support United States national security interests, but that the United States is not otherwise participating in. As an example, this proposed legislation would allow for the United States to airlift French forces to conduct counterterrorism operations where the United States is otherwise not participating in the operation (points 1 and 3). As another example, the proposed legislation would allow for construction of expeditionary hangars for aircraft of a new NATO partner operating out of an expeditionary location in a third country to conduct counter-ISIL missions (point 2).

Finally, current operational support authorities are often confined to specific regions or specific partners. For example, Section 1234 limits use of logistics support to "Iraq;" therefore, aerial refueling support to a European ally based outside the Iraq area of responsibility flying F-16 missions against targets in the Middle East (e.g., Syria), but not necessarily supporting Iraq, would not be authorized under Section 1234. The proposed legislation would address this shortfall by authorizing support according to specified operations, rather than specified regions or partners.

DoD and U.S. Government strategies increasingly seek to share global security burdens by working with and through partner security forces to address regional security challenges without requiring substantial U.S. investment. A vexing challenge in security cooperation is providing support to allies or partners that enables them to make good on the political decision to participate in a combined operation with the United States or a coalition that directly supports U.S. national security interests. Planners must cobble together a variety of authorities and programs to help provide training and protective equipment, enable participation in preparatory exercises, ensure interoperability, transport units to theater, sustain them in combat, and redeploy them after their mission has ended. However, these investments are often critical in enabling partners to reduce operational burdens on U.S. forces.

The proposal to make these authorities both permanent and globally applicable is an expansion of current authorities that DoD does not take lightly. The flexibility inherent in a broader authority would permit DoD to respond more rapidly to contingencies and emergencies, without requiring new, operation-specific legislation each time a contingency arises. However, the proposal does not intend to establish an unconstrained authority; instead, it limits the authority's applicability solely to those operations determined to be in national security interests of the United States. The proposal establishes a dual certification requirement for both the Secretaries of Defense and State to certify that proposed support to an operation or coalition in which U.S. forces are not participating is in the national security interest of the United States. This certification process ensures that any such operational support is provided in accordance with U.S. foreign policy, and provides opportunity for Congress to exercise its oversight responsibilities and seek additional information about any proposed support.

Funding caps are derived from existing legislation. 10 U.S.C. 127d provides for an annual funding cap of $100 million and Section 1234 provides for an annual funding cap of $450 million. Therefore, this proposed legislation combines these two values at $550 million and incorporates the logistics support, supplies, and services that Sections 127d and 1234 allowed for, in addition to any small-scale construction that might be provided. This proposed legislation does not cap the purchase of equipment for loan to allies and partners.

Although this proposed legislation removes the requirement for annual reporting as part of this authority, the support that is provided will be reported under a consolidated annual reporting requirement in a companion legislative proposal.

Budget Implications: The table below details resource requirements associated with this proposal. The resources reflected in the table below are funded within the FY2017 President's

Budget. This proposal is comprised of both 10 U.S.C. 127d (Global lift and sustain) and FY08 NDAA 1234 (Afghanistan and Iraq lift and sustain)

For 10 U.S.C. 127d: The Army programs a small amount over the FYDP for this effort. The Defense Security Cooperation Agency (DSCA) programs for the following year only. For FY08 NDAA Section 1234: DSCA plans to use up to $450 million. The resources reflected in the table below are funded within the FY 2017 President's Base and Overseas Contingency Operation Budget.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Defense	300.0	0	0	0	0	Operation and Maintenance, Defense-Wide OCO	04	4GTD	1002200T
Army	3.5	3.9	3.9	4.1	4.2	Operation and Maintenance, Army	01	121	0202214A
Navy	Navy does not intend to use this authority, which would have been funded in the following account: Operation and Maintenance, Navy.								
USAF	Air Force does not intend to use this authority, which would have been funded in the following account: Operation and Maintenance, Air Force.								

Changes to Existing Law: This section would transfer section 127d of title 10, United States Code, to the proposed new chapter 16 and would amend it to read as shown in the legislative text above.

The current text of 10 U.S.C. 127d, to be replaced by the revision above, is as follows:

TITLE 10, UNITED STATES CODE

~~§ 127d. Allied forces participating in combined operations: authority to provide logistic support, supplies, and services~~

~~(a) AUTHORITY.—(1) Subject to subsections (b) and (c), the Secretary of Defense may provide logistic support, supplies, and services to allied forces participating in a combined operation with the armed forces of the United States.~~

~~(2) In addition to any logistic support, supplies, and services provided under paragraph (1), the Secretary may provide logistic support, supplies, and services to allied forces solely for the purpose of enhancing the interoperability of the logistical support systems of military forces participating in combined operations with the United States in order to facilitate such operations. Such logistic support, supplies, and services may also be provided under this paragraph to a~~

~~nonmilitary logistics, security, or similar agency of an allied government if such provision would directly benefit the armed forces of the United States.~~

~~(3) Provision of support, supplies, and services pursuant to paragraph (1) or (2) may be made only with the concurrence of the Secretary of State.~~

~~(b) LIMITATIONS.—(1) The authority provided by subsection (a)(1) may be used only in accordance with the Arms Export Control Act and other export control laws of the United States.~~

~~(2) The authority provided by subsection (a)(1) may be used only for a combined operation—~~

~~(A) that is carried out during active hostilities or as part of a contingency operation or a noncombat operation (including an operation in support of the provision of humanitarian or foreign disaster assistance, a country stabilization operation, or a peacekeeping operation under chapter VI or VII of the Charter of the United Nations); and~~

~~(B) in a case in which the Secretary of Defense determines that the allied forces to be provided logistic support, supplies, and services—~~

~~(i) are essential to the success of the combined operation; and~~

~~(ii) would not be able to participate in the combined operation but for the provision of such logistic support, supplies, services by the Secretary.~~

~~(c) LIMITATIONS ON VALUE.—(1) The value of logistic support, supplies, and services provided under subsection (a)(1) in any fiscal year may not exceed $100,000,000.~~

~~(2) The value of the logistic support, supplies, and services provided under subsection (a)(2) in any fiscal year may not exceed $5,000,000.~~

~~(d) ANNUAL REPORT.—(1) Not later than December 31 each year, the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives a report on the use of the authority provided by subsection (a) during the preceding fiscal year.~~

~~(2) Each report under paragraph (1) shall be prepared in coordination with the Secretary of State.~~

~~(3) Each report under paragraph (1) shall include, for the fiscal year covered by the report, the following:~~

~~(A) Each nation provided logistic support, supplies, and services through the use of the authority provided by subsection (a).~~

~~(B) For each such nation, a description of the type and value of logistic support, supplies, and services so provided.~~

~~(e) DEFINITION.—In this section, the term "logistic support, supplies, and services" has the meaning given that term in section 2350 (1) of this title.~~

Section 1206 proposal combines authorities for international student attendance at Service Academies and exchange programs in Service Academies for the Army, Navy, and Air Force.

This proposal is part of a package of Fiscal Year 2017 security cooperation authorities-reform proposals sponsored by the Under Secretary of Defense for Policy intended to consolidate and simplify Title 10 security cooperation authorities in a new Chapter 16 in Title 10.

Under current law, nine authorities determine the selection of, funding for, and conditions for international students attending the Army, Navy, or Air Force Academy: Foreign Cadets attending the Military Academy (10 U.S.C. 4344); Foreign Midshipmen attending the Naval Academy (10 U.S.C. 6957); Selection of persons from foreign countries, Air Force Academy (10 U.S.C. 9344); Military Academy exchange program with foreign military academies (10 U.S.C. 4345); Naval Academy exchange program with foreign military academies (10 U.S.C. 6957a); Air Force Exchange program with foreign military academies (10 U.S.C. 9345); Military Academy Foreign and cultural exchange activities (10 U.S.C. 4345a); Naval Academy foreign and cultural exchange activities (10 U.S.C. 6957b); and Air Force Academy Foreign and cultural exchange activities (10 U.S.C. 9345a).

Consolidating these authorities would provide a single, common authority for use by Service Academies to select international students and conduct exchange programs with foreign military academies. It would also provide consistency in the authority available to individual Service Academies for foreign students and international exchanges. Subsequent changes to the law would only require changes to one section to apply equally to all of the Service Academies.

This proposal will not change the ratio of international students to U.S. students in the Service Academies. The cap on international students was raised from 40 to 60 in 2001. Individual academies rarely have hit the 60 person cap and thus no modification is justified at present.

Budget Implications: The table below details resource requirements associated with this proposal. The resources reflected in the table below are funded with the FY 2017 President's Budget. Programming amounts do not change as a result of the consolidation of these authorities.

For the Army: programming for 10 USC 4344, 10 USC 4345, 10 USC 4345a, Army Service Academy authority for international students, exchange programs, and foreign and cultural exchange activities follows:

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	.105	.105	.105	.105	.107	Operation and Maintenance, Army	03	311	0804721A

For the Navy: programming for 10 USC 6957, 10 USC 6957a, 10 USC 6957b, Navy Service Academy authority for international students, exchange programs, and foreign and cultural exchange activities follows:

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Navy	2.27	2.31	2.36	2.40	2.44	Military Personnel, Navy	03	110	0804721N
Navy	1.86	1.90	1.93	1.97	2.00	Operation and Maintenance, Navy	03	380/3A1J	0804721N
Total	4.13	4.21	4.29	4.37	4.44				

For the Air Force: programming for 10 USC 9344, 10 USC 9345, 10 USC 9345a, USAF Service Academy authority for international students, exchange programs, and foreign and cultural exchange activities follows:

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
USAF 9344	4.7	4.8	4.9	5.0	5.1	Military Personnel, Air Force	03	110	84721F
USAF 9345	0.250	0.260	0.270	0.280	0.290	Operation and Maintenance, Air Force	03	31A	84721F
USAF 9345a	0.04	0.04	0.04	0.04	0.04	Operation and Maintenance, Air Force	03	31A	84721F
Total	4.99	5.10	5.21	5.32	5.43				

Changes to Existing Law: This section would make the following changes in provisions of existing law: (1) a new title 10 section, shown above, would consolidate service-specific provisions concerning international students, international exchanges, and cultural exchanges at the Service Academies, and (2) the following sections of title 10 would be repealed: sections 4344, 6957, 9344, 4345, 6957a, 9345, 4345a, 6957b, and 9345a, as shown below.

TITLE 10, UNITED STATES CODE

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CHAPTER 403-UNITED STATES MILITARY ACADEMY

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~~§ 4344 - Selection of persons from foreign countries~~

~~(a) (1) The Secretary of the Army may permit not more than 60 persons at any one time from foreign countries to receive instruction at the Academy. Such persons shall be in addition to the authorized strength of the Corps of the Cadets of the Academy under section 4342 of this title.~~

~~(2) The Secretary of the Army, upon approval by the Secretary of Defense, shall determine the countries from which persons may be selected for appointment under this section and the number of persons that may be selected from each country. The Secretary of the Army may establish entrance qualifications and methods of competition for selection among individual applicants under this section and shall select those persons who will be permitted to receive instruction at the Academy under this section.~~

~~(3) In selecting persons to receive instruction under this section from among applicants from the countries approved under paragraph (2), the Secretary of the Army shall give a priority to persons who have a national service obligation to their countries upon graduation from the Academy.~~

~~(b) (1) A person receiving instruction under this section is entitled to the pay, allowances, and emoluments of a cadet appointed from the United States, and from the same appropriations.~~

~~(2) Each foreign country from which a cadet is permitted to receive instruction at the Academy under this section shall reimburse the United States for the cost of providing such instruction, including the cost of pay, allowances, and emoluments provided under paragraph (1). The Secretary of the Army shall prescribe the rates for reimbursement under this paragraph, except that the reimbursement rates may not be less than the cost to the United States of providing such instruction, including pay, allowances, and emoluments, to a cadet appointed from the United States.~~

~~(3) The Secretary of Defense may waive, in whole or in part, the requirement for reimbursement of the cost of instruction for a cadet under paragraph (2). In the case of a partial waiver, the Secretary shall establish the amount waived.~~

~~(c) (1) Except as the Secretary of the Army determines, a person receiving instruction under this section is subject to the same regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as a cadet at the Academy appointed from the United States. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a cadet at the Academy appointed from the United States.~~

(2) A person receiving instruction under this section is not entitled to an appointment in an armed force of the United States by reason of graduation from the Academy.

(d) A person receiving instruction under this section is not subject to section 4346 (d) of this title.

§ 4345 - Exchange program with foreign military academies

(a) EXCHANGE PROGRAM AUTHORIZED.— The Secretary of the Army may permit a student enrolled at a military academy of a foreign country to receive instruction at the Academy in exchange for a cadet receiving instruction at that foreign military academy pursuant to an exchange agreement entered into between the Secretary and appropriate officials of the foreign country. Students receiving instruction at the Academy under the exchange program shall be in addition to persons receiving instruction at the Academy under section 4344 of this title.

(b) LIMITATIONS ON NUMBER AND DURATION OF EXCHANGES.— An exchange agreement under this section between the Secretary and a foreign country shall provide for the exchange of students on a one-for-one basis each fiscal year. Not more than 100 cadets and a comparable number of students from all foreign military academies participating in the exchange program may be exchanged during any fiscal year. The duration of an exchange may not exceed the equivalent of one academic semester at the Academy.

(c) COSTS AND EXPENSES.— (1) A student from a military academy of a foreign country is not entitled to the pay, allowances, and emoluments of a cadet by reason of attendance at the Academy under the exchange program, and the Department of Defense may not incur any cost of international travel required for transportation of such a student to and from the sponsoring foreign country.

(2) The Secretary may provide a student from a foreign country under the exchange program, during the period of the exchange, with subsistence, transportation within the continental United States, clothing, health care, and other services to the same extent that the foreign country provides comparable support and services to the exchanged cadet in that foreign country.

(3) The Academy shall bear all costs of the exchange program from funds appropriated for the Academy and such additional funds as may be available to the Academy from a source other than appropriated funds to support cultural immersion, regional awareness, or foreign language training activities in connection with the exchange program.

(4) Expenditures in support of the exchange program from funds appropriated for the Academy may not exceed $1,000,000 during any fiscal year.

(d) APPLICATION OF OTHER LAWS.— Subsections (c) and (d) of section 4344 of this title shall apply with respect to a student enrolled at a military academy of a foreign country while attending the Academy under the exchange program.

(e) REGULATIONS.— The Secretary shall prescribe regulations to implement this section. Such regulations may include qualification criteria and methods of selection for students of foreign military academies to participate in the exchange program.

§ 4345a - Foreign and cultural exchange activities

(a) ATTENDANCE AUTHORIZED.—The Secretary of the Army may authorize the Academy to permit students, officers, and other representatives of a foreign country to attend the Academy for periods of not more than four weeks if the Secretary determines that the attendance of such persons contributes significantly to the development of foreign language, cross cultural interactions and understanding, and cultural immersion of cadets.

(b) COSTS AND EXPENSES.—The Secretary may pay the travel, subsistence, and similar personal expenses of persons incurred to attend the Academy under subsection (a).

(c) EFFECT OF ATTENDANCE.—Persons attending the Academy under subsection (a) are not considered to be students enrolled at the Academy and are in addition to persons receiving instruction at the Academy under section 4344 or 4345 of this title.

(d) SOURCE OF FUNDS; LIMITATION.—(1)The Academy shall bear the costs of the attendance of persons under subsection (a) from funds appropriated for the Academy and from such additional funds as may be available to the Academy from a source, other than appropriated funds, to support cultural immersion, regional awareness, or foreign language training activities in connection with their attendance.
(2)Expenditures from appropriated funds in support of activities under this section may not exceed $40,000 during any fiscal year.

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CHAPTER 603-UNITED STATES NAVAL ACADEMY

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§ 6957 - Selection of persons from foreign countries

(a)(1) The Secretary of the Navy may permit not more than 60 persons at any one time from foreign countries to receive instruction at the Academy. Such persons shall be in addition to the authorized strength of the midshipmen under section 6954 of this title.
(2) The Secretary of the Navy, upon approval by the Secretary of Defense, shall determine the countries from which persons may be selected for appointment under this section and the number of persons that may be selected from each country. The Secretary of the Navy may establish entrance qualifications and methods of competition for selection among individual applicants under this section and shall select those persons who will be permitted to receive instruction at the Academy under this section.
(3) In selecting persons to receive instruction under this section from among applicants from the countries approved under paragraph (2), the Secretary of the Navy shall give a priority to persons who have a national service obligation to their countries upon graduation from the Academy.

(b) (1) A person receiving instruction under this section is entitled to the pay, allowances, and emoluments of a midshipman appointed from the United States, and from the same appropriations.

(2) Each foreign country from which a midshipman is permitted to receive instruction at the Academy under this section shall reimburse the United States for the cost of providing such instruction, including the cost of pay, allowances, and emoluments provided under paragraph (1). The Secretary of the Navy shall prescribe the rates for reimbursement under this paragraph, except that the reimbursement rates may not be less than the cost to the United States of providing such instruction, including pay, allowances, and emoluments, to a midshipman appointed from the United States.

(3) The Secretary of Defense may waive, in whole or in part, the requirement for reimbursement of the cost of instruction for a midshipman under paragraph (2). In the case of a partial waiver, the Secretary shall establish the amount waived.

(c)(1) Except as the Secretary of the Navy determines, a person receiving instruction under this section is subject to the same regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as a midshipman at the Academy appointed from the United States. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a midshipman at the Academy appointed from the United States.

(2) A person receiving instruction under this section is not entitled to an appointment in an armed force of the United States by reason of graduation from the Academy.

(d) A person receiving instruction under this section is not subject to section 6958 (d) of this title.

§ 6957a - Exchange program with foreign military academies

(a) EXCHANGE PROGRAM AUTHORIZED.—The Secretary of the Navy may permit a student enrolled at a military academy of a foreign country to receive instruction at the Naval Academy in exchange for a midshipman receiving instruction at that foreign military academy pursuant to an exchange agreement entered into between the Secretary and appropriate officials of the foreign country. Students receiving instruction at the Academy under the exchange program shall be in addition to persons receiving instruction at the Academy under section 6957 of this title.

(b) LIMITATIONS ON NUMBER AND DURATION OF EXCHANGES.—An exchange agreement under this section between the Secretary and a foreign country shall provide for the exchange of students on a one-for-one basis each fiscal year. Not more than 100 midshipmen and a comparable number of students from all foreign military academies participating in the exchange program may be exchanged during any fiscal year. The duration of an exchange may not exceed the equivalent of one academic semester at the Naval Academy.

(c) COSTS AND EXPENSES.—(1) A student from a military academy of a foreign country is not entitled to the pay, allowances, and emoluments of a midshipman by reason of attendance at the Naval Academy under the exchange program, and the Department of Defense may not

incur any cost of international travel required for transportation of such a student to and from the sponsoring foreign country.

(2) The Secretary may provide a student from a foreign country under the exchange program, during the period of the exchange, with subsistence, transportation within the continental United States, clothing, health care, and other services to the same extent that the foreign country provides comparable support and services to the exchanged midshipman in that foreign country.

(3) The Naval Academy shall bear all costs of the exchange program from funds appropriated for the Academy and such additional funds as may be available to the Academy from a source other than appropriated funds to support cultural immersion, regional awareness, or foreign language training activities in connection with the exchange program.

(4) Expenditures in support of the exchange program from funds appropriated for the Naval Academy may not exceed $1,000,000 during any fiscal year.

(d) APPLICATION OF OTHER LAWS.—Subsections (c) and (d) of section 6957 of this title shall apply with respect to a student enrolled at a military academy of a foreign country while attending the Naval Academy under the exchange program.

(e) REGULATIONS.—The Secretary shall prescribe regulations to implement this section. Such regulations may include qualification criteria and methods of selection for students of foreign military academies to participate in the exchange program.

§ 6957b - Foreign and cultural exchange activities

(a) ATTENDANCE AUTHORIZED.—The Secretary of the Navy may authorize the Naval Academy to permit students, officers, and other representatives of a foreign country to attend the Naval Academy for periods of not more than four weeks if the Secretary determines that the attendance of such persons contributes significantly to the development of foreign language, cross cultural interactions and understanding, and cultural immersion of midshipmen.

(b) COSTS AND EXPENSES.—The Secretary may pay the travel, subsistence, and similar personal expenses of persons incurred to attend the Naval Academy under subsection (a).

(c) EFFECT OF ATTENDANCE.—Persons attending the Naval Academy under subsection (a) are not considered to be students enrolled at the Naval Academy and are in addition to persons receiving instruction at the Naval Academy under section 6957 or 6957a of this title.

(d) SOURCE OF FUNDS; LIMITATION.—(1)The Naval Academy shall bear the costs of the attendance of persons under subsection (a) from funds appropriated for the Naval Academy and from such additional funds as may be available to the Naval Academy from a source, other than appropriated funds, to support cultural immersion, regional awareness, or foreign language training activities in connection with their attendance.

(2)Expenditures from appropriated funds in support of activities under this section may not exceed $40,000 during any fiscal year.

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CHAPTER 903-UNITED STATES AIR FORCE ACADEMY

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~~§ 9344 - Selection of persons from foreign countries~~

~~(a) (1) The Secretary of the Air Force may permit not more than 60 persons at any one time from foreign countries to receive instruction at the Academy. Such persons shall be in addition to the authorized strength of the Air Force Cadets of the Academy under section 9342 of this title.~~

~~(2) The Secretary of the Air Force, upon approval by the Secretary of Defense, shall determine the countries from which persons may be selected for appointment under this section and the number of persons that may be selected from each country. The Secretary of the Air Force may establish entrance qualifications and methods of competition for selection among individual applicants under this section and shall select those persons who will be permitted to receive instruction at the Academy under this section.~~

~~(3) In selecting persons to receive instruction under this section from among applicants from the countries approved under paragraph (2), the Secretary of the Air Force shall give a priority to persons who have a national service obligation to their countries upon graduation from the Academy.~~

~~(b)(1) A person receiving instruction under this section is entitled to the pay, allowances, and emoluments of a cadet appointed from the United States, and from the same appropriations.~~

~~(2) Each foreign country from which a cadet is permitted to receive instruction at the Academy under this section shall reimburse the United States for the cost of providing such instruction, including the cost of pay, allowances, and emoluments provided under paragraph (1). The Secretary of the Air Force shall prescribe the rates for reimbursement under this paragraph, except that the reimbursement rates may not be less than the cost to the United States of providing such instruction, including pay, allowances, and emoluments, to a cadet appointed from the United States.~~

~~(3) The Secretary of Defense may waive, in whole or in part, the requirement for reimbursement of the cost of instruction for a cadet under paragraph (2). In the case of a partial waiver, the Secretary shall establish the amount waived.~~

~~(c)(1) Except as the Secretary of the Air Force determines, a person receiving instruction under this section is subject to the same regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as a cadet at the Academy appointed from the United States. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a cadet at the Academy appointed from the United States.~~

~~(2) A person receiving instruction under this section is not entitled to an appointment in an armed force of the United States by reason of graduation from the Academy.~~

~~(d) A person receiving instruction under this section is not subject to section 9346 (d) of this title.~~

§ 9345 - Exchange program with foreign military academies

(a) EXCHANGE PROGRAM AUTHORIZED.—The Secretary of the Air Force may permit a student enrolled at a military academy of a foreign country to receive instruction at the Air Force Academy in exchange for an Air Force cadet receiving instruction at that foreign military academy pursuant to an exchange agreement entered into between the Secretary and appropriate officials of the foreign country. Students receiving instruction at the Academy under the exchange program shall be in addition to persons receiving instruction at the Academy under section 9344 of this title.

(b) LIMITATIONS ON NUMBER AND DURATION OF EXCHANGES.—An exchange agreement under this section between the Secretary and a foreign country shall provide for the exchange of students on a one-for-one basis each fiscal year. Not more than 100 Air Force cadets and a comparable number of students from all foreign military academies participating in the exchange program may be exchanged during any fiscal year. The duration of an exchange may not exceed the equivalent of one academic semester at the Air Force Academy.

(c) COSTS AND EXPENSES.—(1) A student from a military academy of a foreign country is not entitled to the pay, allowances, and emoluments of an Air Force cadet by reason of attendance at the Air Force Academy under the exchange program, and the Department of Defense may not incur any cost of international travel required for transportation of such a student to and from the sponsoring foreign country.

(2) The Secretary may provide a student from a foreign country under the exchange program, during the period of the exchange, with subsistence, transportation within the continental United States, clothing, health care, and other services to the same extent that the foreign country provides comparable support and services to the exchanged Air Force cadet in that foreign country.

(3) The Air Force Academy shall bear all costs of the exchange program from funds appropriated for the Academy and such additional funds as may be available to the Academy from a source other than appropriated funds to support cultural immersion, regional awareness, or foreign language training activities in connection with the exchange program.

(4) Expenditures in support of the exchange program from funds appropriated for the Academy may not exceed $1,000,000 during any fiscal year.

(d) APPLICATION OF OTHER LAWS.—Subsections (c) and (d) of section 9344 of this title shall apply with respect to a student enrolled at a military academy of a foreign country while attending the Air Force Academy under the exchange program.

(e) REGULATIONS.—The Secretary shall prescribe regulations to implement this section. Such regulations may include qualification criteria and methods of selection for students of foreign military academies to participate in the exchange program.

§ 9345a - Foreign and cultural exchange activities

~~(a) ATTENDANCE AUTHORIZED.—The Secretary of the Air Force may authorize the Air Force Academy to permit students, officers, and other representatives of a foreign country to attend the Air Force Academy for periods of not more than four weeks if the Secretary determines that the attendance of such persons contributes significantly to the development of foreign language, cross cultural interactions and understanding, and cultural immersion of cadets.~~

~~(b) COSTS AND EXPENSES.—The Secretary may pay the travel, subsistence, and similar personal expenses of persons incurred to attend the Air Force Academy under subsection (a).~~

~~(c) EFFECT OF ATTENDANCE.—Persons attending the Air Force Academy under subsection (a) are not considered to be students enrolled at the Air Force Academy and are in addition to persons receiving instruction at the Air Force Academy under section 9344 or 9345 of this title.~~

~~(d) SOURCE OF FUNDS; LIMITATION.—(1)The Air Force Academy shall bear the costs of the attendance of persons under subsection (a) from funds appropriated for the Air Force Academy and from such additional funds as may be available to the Air Force Academy from a source, other than appropriated funds, to support cultural immersion, regional awareness, or foreign language training activities in connection with their attendance.~~
~~(2)Expenditures from appropriated funds in support of activities under this section may not exceed $40,000 during any fiscal year.~~

Section 1207 would amend 10 U.S.C. 2282, "Authority to build the capacity of foreign security forces," to enable the sustainment of the capabilities and capacity developed through this and predecessor authorities, and to improve the effectiveness of planning and execution by allowing funds obligated in the initial year to be executed in subsequent years.

This proposal is part of a package of security cooperation authorities reform proposals intended to consolidate and simplify Title 10 security cooperation authorities as part of a new chapter 16 in title 10.

10 U.S.C. 2282 is derived from Section 1206 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2006 (P.L. 109-163). A Senate report accompanying the NDAA for FY 2012 reiterated that the Section 1206 authority "was not intended to duplicate or substitute for other foreign military assistance authorities, nor to sustain previous Section 1206 programs over multiple years." Subsequent revisions of Section 1206, including the codification of 1206 as 10 U.S. C. 2282, have changed the nature of the original authority to include authority to expend resources over multiple years. Congressional communications have encouraged the Department of Defense (DoD) to sustain equipment purchased through Sections 1206 and 10 U.S.C. 2282 more effectively by specifically applying 10 U.S.C. 2282 resources to sustainment. However, due to the NDAA for FY 2006 Senate Committee Report language, DoD's legal interpretation has prevented application of 10 U.S.C. 2282 resources in support of sustainment.

The inability to use 10 U.S.C. 2282 funds for sustainment is creating an unsustainable burden on Foreign Military Financing (FMF) and reduces the State Department's ability to use

FMF strategically to achieve foreign policy or diplomatic objectives as more and more FMF is allocated to sustain equipment purchased through Section 1206 and 10 U.S.C. 2282. Moreover, absent FMF funding, investments made through Section 1206 and 10 U.S.C. 2282 are at risk of disrepair, misuse, and ultimately inoperability because partner nations often lack the capability to sustain such investments themselves. The proposal limits sustainment to that equipment purchased through Sections 1206 or 2282.

10 U.S.C. 2282 currently permits funds obligated in one year to be expended in the next year. Proposed changes would permit funds obligated in the first year to be expended across three years. This modification would improve planning effectiveness and decrease pressure on implementers to expend funds to meet fiscal year deadlines at the expense of program effectiveness.

The proposal makes a technical fix by removing the qualifier "military" from the authority to provide small scale construction, for the sake of consistency with other security cooperation authorities in Title 10. Further, the proposal relocates the cap of $750,000 on small scale construction from within the section to the beginning of the new Title 10, Chapter 16 on Security Cooperation. The cap amount is not changed by this proposal. Establishing the cap for all small scale construction related to security cooperation in one place (the definitions section) will simplify future adjustments of the cap. Changing the cap in the definition will apply to all of the sections where small scale construction is authorized.

The proposal removes subsection (c)(1) that limits the funding to those amounts specifically appropriated for Section 2282. Under a continuing resolution, the Department is unable to fund counterterrorism activities through the 2282 program. This change permits the Section 2282 program to continue operating in the event of a continuing resolution.

The definition of appropriate committees will be located in a new Section 301 in Chapter 16 of Title 10 and will be applicable to all security cooperation authorities in the chapter.

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. Of the amounts programmed below, up to $70 million per year will be available for sustainment items or equipment purchased through Section 2282 or Section 1206.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	270.2	347.2	347.2	347.2	350.0	Operation and Maintenance, Defense-wide	01	4GTD	1002200T

Changes to Existing Law: This proposal would transfer section 2282 of title 10, United States Code, to the proposed new chapter 16 of that title, redesignate it as section 332, and amend it as follows:

~~**§2282. Authority to build the capacity of foreign security forces**~~
§332. Foreign security forces: authority to build capacity

(a) AUTHORITY.—The Secretary of Defense, with the concurrence of the Secretary of State, is authorized to conduct or support a program or programs as follows:

(1) To build the capacity of a foreign country's national military forces in order for that country to-

(A) conduct counterterrorism operations; or

(B) participate in or support on-going allied or coalition military or stability operations that benefit the national security interests of the United States.

(2) To build the capacity of a foreign country's national maritime or border security forces to support counterterrorism operations.

(3) To build the capacity of a foreign country's national-level security forces that have among their functional responsibilities a counterterrorism mission in order for such forces to conduct counterterrorism operations.

(4) To sustain the capacities built—

(A) under paragraphs (1) through (3); or

(B) under section 1206 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163), as that section was in effect before being repealed by section 1205(c) of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 128 Stat. 3536).

(b) TYPES OF CAPACITY BUILDING.—

(1) AUTHORIZED ELEMENTS.—A program under subsection (a) may include the provision of equipment, supplies, training, defense services, sustainment, and small scale ~~military~~ construction.

(2) REQUIRED ELEMENTS.—A program under subsection (a) shall include elements that promote the following:

(A) Observance of and respect for human rights and fundamental freedoms.

(B) Respect for civilian control of the military.

(c) LIMITATIONS.—

~~(1) ANNUAL FUNDING LIMITATION.—The Secretary of Defense may use amounts specifically authorized and appropriated or otherwise made available to carry out programs under this section to carry out programs authorized by subsection (a).~~

~~(2)~~ (1) ASSISTANCE OTHERWISE PROHIBITED BY LAW.—The Secretary of Defense may not use the authority in subsection (a) to provide any type of assistance described in subsection (b) that is otherwise prohibited by any provision of law, except that reporting, notification and spend plan requirements shall not be considered prohibitions for purposes of this section or comparable provisions of law.

~~(3)~~ (2) LIMITATION ON ELIGIBLE COUNTRIES.—The Secretary of Defense may not use the authority in subsection (a) to provide assistance described in subsection (b) to any foreign country that is otherwise prohibited from receiving such type of assistance under any other provision of law.

~~(4)~~ (3) AVAILABILITY OF FUNDS FOR ACTIVITIES ACROSS FISCAL YEARS.—

(A) IN GENERAL.— Amounts made available in a fiscal year to carry out the authority in subsection (a) may be used for programs under that authority that begin in the fiscal year such amounts are made available but end ~~in the next fiscal year~~ no later than the third fiscal year thereafter.

(B) ACHIEVEMENT OF FULL OPERATIONAL CAPABILITY.— If, in accordance with subparagraph (A), equipment is delivered under a program under the authority in subsection (a) in the fiscal year after the fiscal year in which the program begins, amounts for supplies, training, defense services, and small-scale ~~military~~ construction associated with such equipment and necessary to ensure that the recipient unit achieves full operational capability for such equipment may be used in the fiscal year in which the foreign country takes receipt of such equipment and in the next fiscal year.

~~(5)~~ (4) LIMITATIONS ON AVAILABILITY OF FUNDS FOR SMALL-SCALE ~~MILITARY~~ CONSTRUCTION.—

(A) ACTIVITIES UNDER PARTICULAR PROGRAMS.—The amount that may be obligated or expended for small-scale ~~military~~ construction activities under any particular program authorized under subsection (a) may not exceed ~~$750,000~~ the amount specified in section 301(2) of this title.

(B) ACTIVITIES UNDER ALL PROGRAMS.—The amount that may be obligated or expended for small-scale ~~military~~ construction activities during a fiscal year for all programs authorized under subsection (a) during that fiscal year may not exceed up to five percent of the amount made available in such fiscal year to carry out the authority in subsection (a).

(d) FORMULATION AND EXECUTION OF PROGRAM.—The Secretary of Defense and the Secretary of State shall jointly formulate any program under subsection (a). The Secretary of Defense shall coordinate with the Secretary of State in the implementation of any program under subsection (a).

(e) CONGRESSIONAL NOTIFICATION.—

(1) IN GENERAL—Not less than 15 days before initiating activities under a program under subsection (a), the Secretary of Defense shall submit to the appropriate committees of Congress a notice of the following:

(A) The country whose capacity to engage in activities in subsection (a) will be built under the program.

(B) The budget, implementation timeline with milestones, anticipated delivery schedule for assistance, military department responsible for management and associated program executive office, and completion date for the program.

(C) The source and planned expenditure of funds to complete the program.

(D) A description of the arrangements, if any, for the sustainment of the program and the source of funds to support sustainment of the capabilities and

performance outcomes achieved under the program beyond its completion date, if applicable.

(E) A description of the program objectives and assessment framework to be used to develop capability and performance metrics associated with operational outcomes for the recipient unit.

(F) Information, including the amount, type, and purpose, on the assistance provided the country during the three preceding fiscal years under each of the following programs, accounts, or activities:

(i) A program under this section.

(ii) The Foreign Military Financing program under the Arms Export Control Act.

(iii) Peacekeeping Operations.

(iv) The International Narcotics Control and Law Enforcement (INCLE) program under section 481 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291).

(v) Nonproliferation, Anti-Terrorism, Demining, and Related Programs (NADR).

(vi) Counterdrug activities authorized by section 1004 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 374 note) and section 1033 of the National Defense Authorization Act for Fiscal Year 1998.

(vii) Any other significant program, account, or activity for the provision of security assistance that the Secretary of Defense and the Secretary of State consider appropriate.

(G) An assessment of the capacity of the recipient country to absorb assistance under the program.

(H) An assessment of the manner in which the program fits into the theater security cooperation strategy of the applicable geographic combatant command.

(2) COORDINATION WITH SECRETARY OF STATE.—Any notice under paragraph (1) shall be prepared in coordination with the Secretary of State.

(f) ASSESSMENTS OF PROGRAMS.—Amounts available to conduct or support programs under subsection (a) shall be available to the Secretary of Defense to conduct assessments and determine the effectiveness of such programs in building the operational capacity and performance of the recipient units concerned.

~~(g) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term "appropriate committees of Congress" means~~

~~(1) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and~~

~~(2) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.~~

Section 1208 would consolidate and standardize Department of Defense (DoD) reporting on security cooperation authorities and programs in a single annual report. The proposal would make report preparation more efficient, result in a product that is more useful for congressional

oversight, and aid the Department in becoming more transparent about its security cooperation activities.

This proposal is part of a package of security cooperation authorities reform proposals intended to consolidate and simplify Title 10 security cooperation authorities as part of a new Chapter 16 in Title 10.

Reports to Congress are one essential tool to support transparency and enable effective oversight. The proposal would establish a comprehensive annual report for all major DoD security cooperation authorities. The requirements for each program's reporting data would be standardized. Such standardization will enable better comparisons among programs, ensure more fidelity across security cooperation data, and assist the Department in developing effective assessment, monitoring, and evaluation mechanisms.

The Department is currently required to provide data on security cooperation programs to the public through the foreign assistance dashboard, requirements in individual program authorizations, the annual congressional report required by Section 656 of the Foreign Assistance Act (22 U.S.C. 2416), and the biennial report required by section 1211 of P.L. 133-291. The proposal replaces requirements for reports in individual program authorizations with a comprehensive reporting requirement, standardizes reporting requirements across all DoD programs for which reports are required, and requires the DoD report on an annual basis.

The requirement for a DoD report would be codified in Chapter 16 of Title 10. Establishing a permanent reporting requirement for security cooperation programs sends a strong signal to DoD , to Congress, and to the public about the importance of transparency and accountability in security sector assistance programs managed by DoD.

This proposal does not relieve DoD from its obligation to provide security cooperation data through the State Department's foreign assistance dashboard. Rather, the proposal will make it easier for DoD to provide comprehensive, standardized data across the full spectrum of security cooperation programs to the public through the foreign assistance dashboard.

DoD will still contribute security cooperation program and implementation data to the annual report required by section 656 of the Foreign Assistance Act (22 U.S.C. 2416). Such data will be duplicated in the proposed comprehensive DoD report and the Section 656 report in order to ensure consistency with both requirements.

Budget Implications: The resource requirements associated with this proposal are funded within the FY2017 President's Budget. The potential gains in labor efficiency from consolidating various reports into a single consolidated report are offset by the additional labor required due to the increased complexity of a more comprehensive single report. The primary cost in preparing the report is in data collection and not in compiling the data or drafting the report. Data collection costs will remain the same regardless of whether we complete multiple single program reports or a single consolidated report. There is no intention at this point to hire contractors to prepare a consolidated report. The report will be compiled by current staff of OSD Policy and the Defense Security Cooperation Agency.

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

Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291)

~~SEC. 1211. BIENNIAL REPORT ON PROGRAMS CARRIED OUT BY THE DEPARTMENT OF DEFENSE TO PROVIDE TRAINING, EQUIPMENT, OR OTHER ASSISTANCE OR REIMBURSEMENT TO FOREIGN SECURITY FORCES.~~

TITLE 10, UNITED STATES CODE

§302. Annual report

(a) ~~BIENNIAL~~ ANNUAL REPORT REQUIRED.—Not later than February 1 ~~of~~ each~~2016, 2018, and 2020~~ year, the Secretary of Defense shall submit to the congressional defense committees a report that sets forth, on a country-by-country basis, a description of each program carried out by the Department of Defense to provide training, equipment, or other security assistance or reimbursement during the ~~two~~ fiscal ~~years~~ year ending in the year before the year in which such report is submitted under the authorities specified in subsection (c).

(b) ELEMENTS OF REPORT.—Each report required under subsection (a) shall provide for each program covered by such report, and for the reporting period covered by such report, the following:

(1) A description of the purpose and type of the training, equipment, or assistance or reimbursement provided, including how the training, equipment, or assistance or reimbursement provided advances the theater security cooperation strategy of the combatant command, as appropriate.

(2) The cost of such training, equipment, or assistance or reimbursement, including by type of support provided.

(3) A description of the metrics, if any, used for assessing the effectiveness of such training, equipment, or assistance or reimbursement provided.

(4) For each foreign country in which the training, equipment, or assistance or reimbursement was provided, a description of the extent of participation, if any, by the military forces and security forces or other government organizations of such foreign country, other than in a case in which national security or other considerations make inclusion of such information impractical.

(c) SPECIFIED AUTHORITIES.—The authorities specified in this subsection are the following authorities (or any successor authorities):

(1) The following sections of this chapter: 321, 331, 332, 333, 341, 344, 346, and 347.

~~(1) [section transferred to ch. 16 and amended in full] Section 127d [~~**~~331]~~** ~~of title 10, United States Code, relating to authority to provide logistic support, supplies, and services to allied forces participating in a combined operation with the Armed Forces~~.

(2) [no change] Section 166a(b)(6) of title 10, United States Code, relating to humanitarian and civic assistance by the commanders of the combatant commands.

~~(3) [section repealed] Section 168 of title 10, United States Code, relating to authority—~~

~~(A) to provide assistance to nations of the former Soviet Union as part of the Warsaw Initiative Fund;~~

~~(B) to conduct the Defense Institution Reform Initiative; and~~

~~(C) to conduct a program to increase defense institutional legal capacity through the Defense Institute of International Legal Studies.~~

~~(4) [section repealed & restated in new ch. 16] Section 2010 **321**of title 10, United States Code, relating to authority to reimburse foreign troops for participation in combined exercises.~~

~~(e3) [transferred to ch. 16] Section 2011 of title 10, United States Code, relating to authority to reimburse foreign troops for participation in Joint Combined Exercise Training.~~

~~(6) [section transferred to ch. 16 and amended in full] Section 2249c **344**of title 10, United States Code, relating to authority to use appropriated funds for costs associated with education and training of foreign officials under the Regional Defense Combating Terrorism Fellowship Program.~~

~~(7) [section transferred to ch. 16 and amended] Section 2282 **332.**of title 10, United States Code, relating to authority to build the capacity of foreign military forces, or the predecessor authority to such section in section 1206 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3456).~~

(~~3~~8) [401 added] Sections 401 and 2561 of title 10, United States Code, relating to authority to provide humanitarian assistance.

(4) Section 1206 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-29; 10 U.S.C. 2282 note), relating to authority to conduct human rights training of security forces and associated security ministries of foreign countries.

(~~9~~5) [no change] Section 1532 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 128 Stat. 3613), relating to the Afghanistan Security Forces Fund.

(~~10~~6) [no change] Section 1205 of the National Defense Authorization Act for Fiscal Year 2014 (32 U.S.C. 107 note), relating to authority for National Guard State Partnership program.

~~(11) [section repealed & restated in new ch. 16] Section 1081 **333** of the National Defense Authorization Act for Fiscal Year 2012 (10 U.S.C. 168 note), relating to the Ministry of Defense Advisors program.~~

(~~12~~7) [no change] Section 1207 of the National Defense Authorization Act for Fiscal Year 2012 (22 U.S.C. 2151 note), relating to the Global Security Contingency Fund.

(~~13~~8) [no change] Section 1233 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 393), relating to authority to reimburse certain coalition nations for support provided to United States military operations.

(~~14~~9) [no change] Section 1234 of the National Defense Authorization Act for Fiscal Year 2008 (122 Stat. 394), relating to authorization for logistical support for coalition forces supporting certain United States military operations.

(~~15~~10) [no change] Section 1033 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1881), relating to authority to provide additional support for counter-drug activities of Peru and Colombia.

(~~16~~11) [no change] Section 1004 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 374 note), relating to additional support for counter-drug activities.

(~~17~~12) [no change] Any other authority on assistance or reimbursement that the Secretary of Defense considers appropriate and consistent with subsection (a).

(d) NONDUPLICATION OF EFFORT.—If any information required under subsection (a) has been included in another report or notification previously submitted to Congress by law, the Secretary of Defense may provide a list of such reports and notifications at the time of submitting the report required by subsection (a) in lieu of including such information in the report required by subsection (a).

(e) FORM.—Each report required under subsection (a) shall be submitted in unclassified form, but may contain a classified annex.

(f) REPEAL OF SUPERSEDED REQUIREMENT.—***

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Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291)

SEC. 1534. COUNTERTERRORISM PARTNERSHIPS FUND.

(a) AVAILABILITY OF FUNDS.—Amounts authorized to be appropriated for fiscal year 2015 by this title for the Counterterrorism Partnerships Fund shall be available for the following purposes:

(1) To provide support and assistance to foreign security forces or other groups or individuals to conduct, support, or facilitate counterterrorism and crisis response activities under authority provided the Department of Defense by any other provision of law (in this section referred to as an `underlying Department of Defense authority').

(2) To improve the capacity of the United States Armed Forces to provide enabling support to counterterrorism and crisis response activities undertaken by foreign security forces or other groups or individuals under any underlying Department of Defense authority.

(b) GEOGRAPHIC LIMITATION.—

(1) IN GENERAL.—Activities using amounts available pursuant to subsection (a) may be conducted only in the area of responsibility of the United States Central

Command or the United States Africa Command, but may not include activities for the provision of assistance or other support for the Government of Iraq.

(2) ADDITIONAL AREAS OF RESPONSIBILITY.—Activities using amounts available pursuant to subsection (a) may be conducted in an area of responsibility of a geographic combatant command not specified in paragraph (1) if the Secretary of Defense determines that--

(A) such activities are consistent with the purposes specified in subsection (a);

(B) the absence of such activities would result in an increased risk to the national security of the United States; and

(C) such activities could not be conducted using funds already available to the Department of Defense (other than funds transferred from the Counterterrorism Partnerships Fund).

(3) NOTICE OF DETERMINATION OF ADDITIONAL AREAS.—The Secretary shall submit to the congressional defense committees a notification of any determination made pursuant to paragraph (2) not later than 15 days before transferring amounts from the Counterterrorism Partnerships Fund for activities in the area of responsibility covered by such determination.

(c) CONTRACT AUTHORITY.—Activities using amounts available pursuant to subsection (a) may be conducted by contract, including contractor-operated capabilities, if the Secretary of Defense typically acquires services or equipment by contract in conducting a similar activity for the Department of Defense.

(d) TRANSFER REQUIREMENT AND AUTHORITIES.—

(1) USE OF FUNDS ONLY PURSUANT TO TRANSFER- Amounts in the Counterterrorism Partnerships Fund may be used for the purposes specified in subsection (a) only pursuant to transfers authorized by this subsection.

(2) TRANSFERS AUTHORIZED- Amounts in the Counterterrorism Partnerships Fund may be transferred from the Fund to any accounts of the Department of Defense for operation and maintenance for the purposes specified in subsection (a).

(3) REPROGRAMMING REQUIREMENT- The Secretary of Defense shall submit a reprogramming or transfer request from amounts authorized to be appropriated by section 1510 to the congressional defense committees to carry out activities supported under this section. Each such request shall set forth the following:

(A) A detailed description of the activities to be supported by the reprogramming or transfer, including the request of the commander of the combatant command concerned for support, urgent operational need, or emergent operational need.

(B) The amount planned to be obligated or expended on such activities, the recipient of such amount, and the timeline for such obligation or expenditure.

(C) The underlying Department of Defense authorities that authorize such activities.

(4) EFFECT ON AUTHORIZATION AMOUNTS- The transfer of an amount to an account under the authority in paragraph (2) shall be deemed to increase the amount authorized for such account by an amount equal to the amount transferred.

(5) TRANSFERS BACK TO THE FUND- Upon a determination that all or part of the funds transferred from the Counterterrorism Partnerships Fund under paragraph (2) are not necessary for the purpose provided, such funds may be transferred back to the Fund.

(6) CONSTRUCTION WITH OTHER TRANSFER AUTHORITY- The transfer authority provided by paragraph (2) is in addition to any other transfer authority available to the Department of Defense.

(e) CONSTRUCTION WITH OTHER LIMITATIONS.—

(1) IN GENERAL- Except as provided in paragraph (2), nothing in this section may be construed to terminate, alter, or override any requirement or limitation applicable to activities funded with amounts in the Counterterrorism Partnerships Fund under the underlying Department of Defense authority that authorizes such activities.

(2) INAPPLICABILITY OF LIMITATIONS ON AVAILABILITY OF FUNDS- A limitation on the amount that may be used for activities in a fiscal year under the underlying Department of Defense authority that authorizes such activities shall not apply to amounts made available for such activities in such fiscal year pursuant to this section.

(f) PLAN.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a plan for the intended management and use of the Counterterrorism Partnerships Fund. The plan shall include the following:

(1) An identification of the underlying Department of Defense authorities that the Secretary has identified as available for use pursuant to subsection (a).

(2) A detailed description, to the maximum extent practicable, of the requirements, activities, and planned allocation of amounts available for use pursuant to subsection (a).

(3) An identification of the senior civilian employee of the Department of Defense designated by the Secretary to serve as manager of the Fund.

~~(g) SEMI-ANNUAL REPORTS- Not later than 60 days after the end of the first half of fiscal years 2015, 2016, and 2017, and the second half of fiscal years 2015 and 2016, the Secretary of Defense shall submit to the congressional defense committees a report setting forth, for the preceding fiscal half-year, the following:~~

~~(1) A description of the underlying Department of Defense authorities that authorized activities supported by the Counterterrorism Partnerships Fund.~~

~~(2) A description of the activities supported by the Fund.~~

~~(3) A description of any obligations and expenditures of amounts transferred from the Fund, including recipients of amounts, set forth by country (where applicable).~~

~~(4) A description of any determinations made as described in subsection (d)(5), and a description of any transfers back to the Fund pursuant to that subsection.~~

~~(5) A description of any revisions to the plan submitted pursuant to subsection (f).~~

(h) DURATION OF AUTHORITY.—No amounts may be transferred from the Counterterrorism Partnerships Fund after December 31, 2016.

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NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2014

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SEC. 1205. DEPARTMENT OF DEFENSE STATE PARTNERSHIP PROGRAM.

(a) AUTHORITY.—

(1) IN GENERAL.—The Secretary of Defense, with the concurrence of the Secretary of State, is authorized to establish a program of activities described in paragraph (2), to support the security cooperation objectives of the United States, between members of the National Guard of a State or territory and any of the following:

(A) The military forces of a foreign country.

(B) The security forces of a foreign country.

(C) Governmental organizations of a foreign country whose primary functions include disaster response or emergency response.

(2) STATE PARTNERSHIP PROGRAM.—Each program established under this subsection shall be known as a 'State Partnership.

(b) LIMITATION.-An activity with forces referred to in subsection (a)(1)(B) or organizations described in subsection (a)(1)(C) under a program established under subsection (a) may be carried out only if the Secretary of Defense, with the concurrence of the Secretary of State, determines and notifies the appropriate congressional committees not less than 15 days before initiating such activity that the activity is in the national security interests of the United States.

(c) COORDINATION OF ACTIVITIES.—The Chief of the National Guard Bureau shall designate a director for each State and territory to be responsible for the coordination of activities under a program established under subsection (a) for such State or territory and reporting on activities under the program.

(d) REGULATIONS.—

(1) In general.-Not later than 180 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense shall prescribe regulations to carry out this section. Such regulations shall establish accounting procedures to ensure that expenditures of funds to carry out this section are accounted for and appropriate.

(2) Notification.-Not later than 15 days after the date on which such regulations have been prescribed, the Secretary of Defense-

(A) shall notify the appropriate congressional committees that the regulations have been prescribed; and

(B) shall provide to the appropriate congressional committees a copy of the regulations.

(e) AVAILABILITY OF AUTHORIZED FUNDS FOR PROGRAM.—

(1) IN GENERAL.-Funds authorized to be appropriated to the Department of Defense, including funds authorized to be appropriated for the Army National Guard and Air National Guard, are authorized to be available-

(A) for payment of costs incurred by the National Guard of a State or territory to conduct activities under a program established under subsection (a); and

(B) for payment of incremental expenses of a foreign country to conduct activities under a program established under subsection (a).

(2) Limitations.-

(A) Active duty requirement.-Funds shall not be available under paragraph (1) for the participation of a member of the National Guard of a State or territory in activities in a foreign country unless the member is on active duty in the Armed Forces at the time of such participation

(B) Incremental expenses.-The total amount of payments for incremental expenses of foreign countries as authorized under paragraph (1)(B) for activities under programs established under subsection (a) in any fiscal year may not exceed $10,000,000.

(f) REPORTS AND NOTIFICATIONS.-

(1) REVIEW AND REPORT OF EXISTING PROGRAMS.-

(A) REVIEW.-The Secretary of Defense, with the concurrence of the Secretary of State, shall conduct a comprehensive review of each program under the State Partnership Program as in effect on the day before the date of the enactment of this Act [Dec. 26, 2013].

(B) REPORT.-Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate congressional committees a report on-

(i) the findings of the review conducted under subparagraph (A); and

(ii) any recommendations with respect to the review conducted under subparagraph (A).

~~(2) ANNUAL REPORT.-~~

~~(A) In general. Not later than January 31 of each year following a fiscal year in which activities under each program established under subsection (a) are carried out, the Secretary of Defense shall submit to the appropriate congressional committees a report on such activities under such program.~~

~~(B) Matters to be included. Each report shall specify, for the fiscal year covered by such report, the following:~~

~~(i) Each foreign country in which the activities were conducted.~~

~~(ii) The type of activities conducted, the duration of the activities, and the number of members of the National Guard of each State or territory involved in such activities.~~

~~(iii) The extent of participation in the activities by the military forces and security forces or other government organizations of such foreign country.~~

~~(iv) A summary of expenditures to conduct the activities, including the annual cost of the activities, with a breakdown of such expenditures by geographic combatant command and country.~~

~~(v) With respect to activities described in subsection (b), the objective of the activities, and a description of how the activities support the theater campaign plan of the commander of the geographic combatant command with responsibility for the country or countries in which the activities occurred.~~

(vi) An assessment of the extent to which the activities conducted during the previous year met the objectives described in clause (v).

(g) RULE OF CONSTRUCTION.-Nothing in this section shall be construed to supersede any authority under title 10, United States Code, as in effect on the date of the enactment of this Act [Dec. 26, 2013].

(h) DEFINITIONS.-In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.-The term 'appropriate congressional committees' means—

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

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

(2) INCREMENTAL EXPENSES.-The term 'incremental expenses', with respect to a foreign country-

(A) means the reasonable and proper costs of rations, fuel, training ammunition, transportation, and other goods and services consumed by the country as a direct result of the country's participation in activities conducted under subsection (a); and

(B) does not include-

(i) any form of lethal assistance (excluding training ammunition); or

(ii) pay, allowances, and other normal costs of the personnel of the country.

(h) REPEAL OF SUPERSEDED AUTHORITY.-[Repealed section 1210 of P. L. 111–84.]

(i) TERMINATION.-The authority granted under subsection (a) shall terminate on September 30, 2021.

National Defense Authorization Act for Fiscal Year 2008

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

(a) AUTHORITY.—From funds made available for the Department of Defense for fiscal year 2015 for overseas contingency operations for operation and maintenance, Defense-wide activities, the Secretary of Defense may reimburse any key cooperating nation for the following:

(1) Logistical and military support provided by that nation to or in connection with United States military operations in Iraq of in Operation Enduring Freedom in Afghanistan.

(2) Logistical, military, and other support, including access, provided by that nation to or in connection with United States military operations.

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

(1) The provision of specialized training to personnel of that nation in connection with such operations, including training of such personnel before deployment in connection with such operations.

(2) The procurement and provision of supplies to that nation in connection with such operations.

(3) The procurement of specialized equipment and the loaning of such specialized equipment to that nation on a nonreimbursable basis in connection with such operations.

(c) AMOUNTS OF REIMBURSEMENT.—

(1) IN GENERAL.—Reimbursement authorized by subsection (a) may be made in such amounts as the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of the Office of Management and Budget, may determine, based on documentation determined by the Secretary of Defense to adequately account for the support provided.

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

(d) LIMITATIONS.—

(1) LIMITATION ON AMOUNT.—The total amount of reimbursements made under the authority in subsection (a) during fiscal year 2008 may not exceed $1,200,000,000. The aggregate amount of reimbursements made under subsection (a) and support provided under subsection (b) during fiscal year 2015 may not exceed $1,200,000,000. Of the aggregate amount specified in the preceding sentence, the total amount of reimbursements made under subsection (a) and support provided under subsection (b) to Pakistan during fiscal year 2015 may not exceed $900,000,000.

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

(3) PROHIBITION ON REIMBURSEMENT OF PAKISTAN FOR SUPPORT DURING PERIODS CLOSED TO TRANSSHIPMENT.—Effective as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2013, funds (including funds from a prior fiscal year that remain available for obligation) may not be

used for reimbursements under the authority in subsection (a) for Pakistan for claims of support provided during any period when the ground lines of supply through Pakistan to Afghanistan were closed to the transshipment of equipment and supplies in support of United States military operations in Afghanistan.

(e) NOTICE TO CONGRESS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary of Defense shall notify the appropriate congressional committees not later than 15 days before making any reimbursement under the authority in subsection (a) or providing any support under the authority in subsection (b). In the case of any reimbursement to Pakistan under the authority of this section, such notice shall be made in accordance with the notice requirements under section 1232(b).

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

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

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

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

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

SEC. 1234. LOGISTICAL SUPPORT FOR COALITION FORCES SUPPORTING OPERATIONS IN IRAQ AND AFGHANISTAN.

(a) AVAILABILITY OF FUNDS FOR LOGISTICAL SUPPORT- Subject to the provisions of this section, amounts available to the Department of Defense for fiscal year 2008 for operation and maintenance may be used to provide supplies, services, transportation (including airlift and sealift), and other logistical support to coalition forces supporting United States military and stabilization operations in Iraq and Afghanistan.

(b) Required Determination- The Secretary may provide logistical support under the authority in subsection (a) only if the Secretary determines that the coalition forces to be provided the logistical support--

(1) are essential to the success of a United States military or stabilization operation; and

(2) would not be able to participate in such operation without the provision of the logistical support.

(c) COORDINATION WITH EXPORT CONTROL LAWS- Logistical support may be provided under the authority in subsection (a) only in accordance with applicable provisions of the Arms Export Control Act and other export control laws of the United States.

(d) LIMITATION ON VALUE- The total amount of logistical support provided under the authority in subsection (a) in fiscal year 2008 may not exceed $400,000,000.

~~(e) QUARTERLY REPORTS-~~

~~(1) REPORTS REQUIRED- Not later than 15 days after the end of each fiscal-year quarter of fiscal year 2008, the Secretary shall submit to the congressional defense committees a report on the provision of logistical support under the authority in subsection (a) during such fiscal-year quarter.~~

~~(2) ELEMENTS- Each report under paragraph (1) shall include, for the fiscal-year quarter covered by such report, the following:~~

~~(A) Each nation provided logistical support under the authority in subsection (a).~~

~~(B) For each such nation, a description of the type and value of logistical support so provided.~~

TITLE 10, UNITED STATES CODE

§401. Humanitarian and civic assistance provided in conjunction with military operations

(a)(1) Under regulations prescribed by the Secretary of Defense, the Secretary of a military department may carry out humanitarian and civic assistance activities in conjunction with authorized military operations of the armed forces in a country if the Secretary concerned determines that the activities will promote-

(A) the security interests of both the United States and the country in which the activities are to be carried out; and

(B) the specific operational readiness skills of the members of the armed forces who participate in the activities.

(2) Humanitarian and civic assistance activities carried out under this section shall complement, and may not duplicate, any other form of social or economic assistance which may be provided to the country concerned by any other department or agency of the United States. Such activities shall serve the basic economic and social needs of the people of the country concerned.

(3) Humanitarian and civic assistance may not be provided under this section (directly or indirectly) to any individual, group, or organization engaged in military or paramilitary activity.

(b) Humanitarian and civic assistance may not be provided under this section to any foreign country unless the Secretary of State specifically approves the provision of such assistance.

(c)(1) Expenses incurred as a direct result of providing humanitarian and civic assistance under this section to a foreign country shall be paid for out of funds specifically appropriated for such purpose.

[(2), (3) Repealed. Pub. L. 109–364, div. A, title XII, §1203(a)(3), Oct. 17, 2006, 120 Stat. 2413 .]

(4) Nothing in this section may be interpreted to preclude the incurring of minimal expenditures by the Department of Defense for purposes of humanitarian and civic assistance out of funds other than funds appropriated pursuant to paragraph (1), except that funds appropriated to the Department of Defense for operation and maintenance (other than funds appropriated pursuant to such paragraph) may be obligated for humanitarian and civic assistance under this section only for incidental costs of carrying out such assistance.

~~(d) The Secretary of Defense shall submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives a report, not later than March 1 of each year, on activities carried out under this section during the preceding fiscal year. The Secretary shall include in each such report-~~

~~(1) a list of the countries in which humanitarian and civic assistance activities were carried out during the preceding fiscal year;~~

~~(2) the type and description of such activities carried out in each country during the preceding fiscal year; and~~

~~(3) the amount expended in carrying out each such activity in each such country during the preceding fiscal year.~~

(e) In this section, the term "humanitarian and civic assistance" means any of the following:

(1) Medical, surgical, dental, and veterinary care provided in areas of a country that are rural or are underserved by medical, surgical, dental, and veterinary professionals, respectively, including education, training, and technical assistance related to the care provided.

(2) Construction of rudimentary surface transportation systems.

(3) Well drilling and construction of basic sanitation facilities.

(4) Rudimentary construction and repair of public facilities.

Section 1209 would repeal security cooperation authorities that have been determined to be superseded, obsolete, or duplicative.

This proposal is part of a package of security cooperation authorities reform proposals intended to consolidate and simplify Title 10 security cooperation authorities as part of a new chapter 16 in title 10, United States Code.

In developing the security cooperation authorities reform package, the Department of Defense (DoD) conducted an in-depth review of all of its current authorities. During the course of this review, the following authorities in title 10, United States Code, were determined to be superseded, obsolete, or duplicative.

- Section 168, relating to military-to-military contacts and comparable activities, is repealed because of two consolidation proposals, Sections 1202 (Military-to-military

exchanges,) and 1203 (Military-to-military contacts: payment of personnel expenses), that make section 168 redundant.

- Section 1051c, relating to assignment of members of foreign military forces to improve education and training in information security through multilateral, bilateral, or regional cooperation programs, is consolidated in section 1202.

- Section 2562, relating to a limitation on use of excess construction or fire equipment, from Department of Defense stocks in foreign assistance or military sales programs, is obsolete.

- Sections 4681 and 9681, relating to sale of surplus war material to States and foreign governments, are obsolete and duplicative.

Several authorities have been impacted by consolidation of other authorities and are no longer of value toDoD. The proposal seeks to repeal these authorities.

Authorities that are not used need not be retained in title 10. Authorities that were provided by Congress during wartime or a contingency need not be continued if their value to DoD has waned. Authorities sought by DoD that have not been used in a reasonable amount of time after the enactment of a law, should be repealed. This proposal seeks to reduce the number of authorities that fall into these categories in order to ensure clarity and coherence across DoD security cooperation authorities.

Budget Implications: This proposal is neutral in its impact to the budget.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Dept of Defense	0	0	0	0	0				

Changes to Existing Law: This section would repeal the following provision of title 10, United States Code:

TITLE 10, UNITED STATES CODE

*** * * * * * ***

~~§ 168. Military-to-military contacts and comparable activities~~

~~(a) PROGRAM AUTHORITY.—The Secretary of Defense may conduct military-to-military contacts and comparable activities that are designed to encourage a democratic orientation of defense establishments and military forces of other countries.~~

~~(b) ADMINISTRATION.—The Secretary may provide funds appropriated for carrying out subsection (a) to the following officials for use as provided in subsection (c):~~

~~(1) The commander of a combatant command, upon the request of the commander.~~

~~(2) An officer designated by the Chairman of the Joint Chiefs of Staff, with respect to an area or areas not under the area of responsibility of a commander of a combatant command.~~

~~(3) The head of any Department of Defense component.~~

~~(c) AUTHORIZED ACTIVITIES.—An official provided funds under subsection (b) may use those funds for the following activities and expenses:~~

~~(1) The activities of traveling contact teams, including any transportation expense, translation services expense, or administrative expense that is related to such activities.~~

~~(2) The activities of military liaison teams.~~

~~(3) Exchanges of civilian or military personnel between the Department of Defense and defense ministries of foreign governments.~~

~~(4) Exchanges of military personnel between units of the armed forces and units of foreign armed forces.~~

~~(5) Seminars and conferences held primarily in a theater of operations.~~

~~(6) Distribution of publications primarily in a theater of operations.~~

~~(7) Personnel expenses for Department of Defense civilian and military personnel to the extent that those expenses relate to participation in an activity described in paragraph (3), (4), (5), or (6).~~

~~(8) Reimbursement of military personnel appropriations accounts for the pay and allowances paid to reserve component personnel for service while engaged in any activity referred to in another paragraph of this subsection.~~

~~(9) The assignment of personnel described in paragraph (3) or (4) on a non-reciprocal basis if the Secretary of Defense determines that such an assignment, rather than an exchange of personnel, is in the interests of the United States.~~

~~(d) RELATIONSHIP TO OTHER FUNDING.—Any amount provided during any fiscal year to an official under subsection (b) for an activity or expense referred to in subsection (c) shall be in addition to amounts otherwise available for those activities and expenses for that fiscal year.~~

~~(e) LIMITATIONS.—~~

~~(1) Funds may not be provided under this section for a fiscal year for any activity for which—~~

~~(A) funding was proposed in the budget submitted to Congress for that fiscal year pursuant to section 1105(a) of title 31; and~~

~~(B) Congress did not authorize appropriations.~~

~~(2) An activity may not be conducted under this section with a foreign country unless the Secretary of State approves the conduct of such activity in that foreign country.~~

~~(3) Funds may not be provided under this section for a fiscal year for any country that is not eligible in that fiscal year for assistance under chapter 5 of part II of the Foreign Assistance Act of 1961.~~

(4) Except for those activities specifically authorized under subsection (c), funds may not be used under this section for the provision of defense articles or defense services to any country or for assistance under chapter 5 of part II of the Foreign Assistance Act of 1961.

(5) Funds available to carry out this section shall be available, to the extent provided in appropriations Acts, for programs or activities under this section that begin in a fiscal year and end in the following fiscal year.

(f) ACTIVE DUTY END STRENGTHS.—A member of a reserve component who is engaged in activities authorized under this section shall not be counted for purposes of the following personnel strength limitations:

(1) The end strength for active-duty personnel authorized pursuant to section 115(a)(1) of this title for the fiscal year in which the member carries out the activities referred to under this section.

(2) The authorized daily average for members in pay grades E–8 and E–9 under section 517 of this title for the calendar year in which the member carries out such activities.

(3) The authorized strengths for commissioned officers under section 523 of this title for the fiscal year in which the member carries out such activities.

(g) MILITARY-TO-MILITARY CONTACTS DEFINED.—In this section, the term "military-to-military contacts" means contacts between members of the armed forces and members of foreign armed forces through activities described in subsection (c).

* * * * * * *

§ 1051c. Multilateral, bilateral, or regional cooperation programs: assignments to improve education and training in information security

(a) ASSIGNMENTS AUTHORIZED; PURPOSE.—The Secretary of Defense may authorize the temporary assignment of a member of the military forces of a foreign country to a Department of Defense organization for the purpose of assisting the member to obtain education and training to improve the member's ability to understand and respond to information security threats, vulnerabilities of information security systems, and the consequences of information security incidents.

(b) PAYMENT OF CERTAIN EXPENSES.—To facilitate the assignment of a member of a foreign military force to a Department of Defense organization under subsection (a), the Secretary of Defense may pay such expenses in connection with the assignment as the Secretary considers in the national security interests of the United States.

(c) PROTECTION OF DEPARTMENT CYBERSECURITY.—In authorizing the temporary assignment of members of foreign military forces to Department of Defense organizations under subsection (a), the Secretary of Defense shall require the inclusion of adequate safeguards to prevent any compromising of Department information security.

(d) MULTI-YEAR AVAILABILITY OF FUNDS.—Funds available to carry out this section shall be available, to the extent provided in appropriations Acts, for programs and activities under this section that begin in a fiscal year and end in the following fiscal year.

(e) INFORMATION SECURITY DEFINED.—In this section, the term "information security" refers to—

(1) the confidentiality, integrity, or availability of an information system or the information such system processes, stores, or transmits; and

(2) the security policies, security procedures, or acceptable use policies with respect to an information system.

* * * * * * *

§2562. Limitation on use of excess construction or fire equipment from Department of Defense stocks in foreign assistance or military sales programs

(a) LIMITATION.—Excess construction or fire equipment from the stocks of the Department of Defense may be transferred to any foreign country or international organization pursuant to part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2301 et seq.) or section 21 of the Arms Export Control Act (22 U.S.C. 2761) only if—

(1) no department or agency of the Federal Government (other than the Department of Defense), no State, and no other person or entity eligible to receive excess or surplus property under subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 submits to the Defense Reutilization and Marketing Service a request for such equipment during the period for which the Defense Reutilization and Marketing Service accepts such a request; or

(2) the President determines that the transfer is necessary in order to respond to an emergency for which the equipment is especially suited.

(b) RULE OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to limit the authority to transfer construction or fire equipment under section 2557 of this title.

(c) DEFINITION.—In this section, the term "construction or fire equipment" includes tractors, scrapers, loaders, graders, bulldozers, dump trucks, generators, pumpers, fuel and water tankers, crash trucks, utility vans, rescue trucks, ambulances, hook and ladder units, compressors, and miscellaneous fire-fighting equipment.

* * * * * * *

§4681. Surplus war material: sale to States and foreign governments

Subject to regulations under section 121 of title 40, the Secretary of the Army may sell surplus war material and supplies, except food, of the Department of the Army, for which there is no adequate domestic market, to any State or to any foreign government with which the United States was at peace on June 5, 1920. Sales under this section shall be made upon terms that the Secretary considers expedient.

* * * * * * *

~~**§9681. Surplus war material: sale to States and foreign governments**~~

~~Subject to regulations under section 121 of title 40, the Secretary of the Air Force may sell surplus war material and supplies, except food, of the Department of the Air Force, for which there is no adequate domestic market, to any State or to any foreign government with which the United States was at peace on June 5, 1920. Sales under this section shall be made upon terms that the Secretary considers expedient.~~

Subtitle B—Other Matters

Section 1211 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 1212 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 1213 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 1214 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. [6] 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).

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.

[6] 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.

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 Capacity	0	1	1	1	1	Operation and Maintenance, Army	01	138	
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.

Section 1215 would modify and extend of the Afghan Special Immigrant Program reflect the enduring and evolving nature of the Afghan mission. The extension reflects the continuing nature of the United States and international missions in Afghanistan, extending the period for special immigrant status qualifying service and the petition period by 1 year. The number of special immigrant visas for fiscal years 2015, 2016, and 2017 are increased from 4,000 to 11,000. The modifications reflect that the previous International Security Assistance Force is no longer an extant organization, presently replaced by the Resolute Support NATO mission (with the potential for differently named future iterations). The modifications eliminate the termination date for unused special immigrant visas, instead permitting such visa issuance until they are exhausted.

Budget Implications: This proposal would be funded through the Department of State.

RESOURCE REQUIREMENTS ($MILLIONS)							
	FY 2017	**FY 2018**	**FY 2019**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
O&M-AF	0	0	0				
Total	0	0	0				

Changes to Existing Law: This proposal would make the following changes to section 602(b)(3)(F) of the Afghan Allies Protection Act of 2009 (title VI of division F of Public Law 111–8; 8 U.S.C. 1101 note) as most recently amended by section 1216 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92):

Afghan Allies Protection Extension Act of 2009
(Public Law 111–8; 8 U.S.C. 1101 note)

TITLE VI
AFGHAN ALLIES PROTECTION ACT OF 2009

SEC. 601. SHORT TITLE.

This title may be cited as the "Afghan Allies Protection Act of 2009".

SEC. 602. PROTECTION FOR AFGHAN ALLIES.

(a) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term "appropriate committees of Congress" means—

(1) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on the Judiciary of the Senate; and

(2) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on the Judiciary of the House of Representatives.

(b) SPECIAL IMMIGRANT STATUS FOR CERTAIN AFGHANS.—

* * * * *

(3) NUMERICAL LIMITATIONS..—

* * * * *

(F) FISCAL YEARS 2015, 2016, AND 2017.—In addition to any unused balance under subparagraph (D), for the period beginning on the date of the enactment of this subparagraph until such time that available special immigrant visas under subparagraphs (D) and (E) and this subparagraph are exhausted, the total number of principal aliens who may be provided special immigrant status under this section shall not exceed ~~7,000~~11,000. For purposes of status provided under this subparagraph—

(i) the period during which an alien must have been employed in accordance with paragraph (2)(A)(ii) must terminate on or before ~~December 31, 2016~~ December 31, 2017;

(ii) the principal alien seeking special immigrant status under this subparagraph shall apply to the Chief of Mission in accordance with paragraph (2)(D) not later than ~~December 31, 2016~~ December 31, 2017; and

(iii) the authority to issue visas shall commence on the date of the enactment of this subparagraph and shall terminate on the date such visas are exhausted.

* * * * *

Section 1216 would authorize the Secretary of Defense to destroy the eight U.S.-origin chemical munitions on San Jose Island, Panama. These munitions are remnants from research, development, and testing conducted jointly by a United States, British, and Canadian effort during and shortly after World War II. By a letter dated May 8, 2013, the Republic of Panama formally requested U.S. assistance and limited its request to disposing only these eight U.S.-origin chemical munitions.

Subsection (a) would authorize the Secretary to destroy the eight munitions identified in a 2002 inspection report by the Technical Secretariat of the Organization for the Prohibition of Chemical Weapons.

Subsection (b) would provide that any such destruction of munitions may be carried out only after the Republic of Panama has taken two steps. The first step would require Panama to change its declaration under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction regarding the status of the eight munitions under the Convention, consistent with its letter dated May 8, 2013. This change of status would provide an acknowledgement by the Republic of Panama that another State (*i.e.*, the United States) is not responsible under the Convention for destroying the eight munitions identified in a 2002 inspection report by the Technical Secretariat of the Organization for the Prohibition of Chemical Weapons, which would be further evidence that the United States is not responsible for the destruction of any chemical weapons that may be located on San Jose Island. The second step would require the Republic of Panama to affirm, in writing, that it understands that the United States only intends to destroy the munitions described in subsections (c) and (d), and that the United States is not legally obligated to destroy, and does not intend to destroy, any other munitions that may be located on San Jose Island as a result of certain activities conducted on the island from 1943 to 1947.

Subsection (c) would specify the munitions to which the section applies by reference to the 2002 report of the Technical Secretariat of the Organization for the Prohibition of Chemical Weapons.

Subsection (d) would provide that destruction of the specified munitions may include destroying other munitions, but only to the extent necessary to allow for the destruction of the eight munitions addressed in the Republic of Panama formal request for assistance.

Subsection (e) would provide that the Department of Defense "Chemical Agents and Munitions Destruction, Defense" account may be used as the funding source for the destruction of the eight munitions.

A unique and longstanding relationship exists between the United States and the Republic of Panama. The Organization for the Prohibition of Chemical Weapons has identified, and the Department of Defense (DoD) is acting to confirm the condition of eight intact U.S.-origin chemical munitions on San Jose Island, Republic of Panama, remaining from the use of the island for research, development, and testing of chemical weapons during and shortly after World War II by U.S., British, and Canadian forces. Those eight chemical munitions are unexploded ordnance remaining from that research, development, and testing program.

A 1943 lease between the United States and the Republic of Panama governed the temporary use of San Jose Island (and several other locations) for defense purposes; it provided that the property would be returned to the Republic of Panama in its used condition and without any requirement for payment of residual value.

The *ex gratia* effort by the United States to destroy the eight chemical munitions would be in full satisfaction of any and all claims of the Republic of Panama relating to any chemical munitions not described in subsection (c) on San Jose Island, Panama. The basis for and

authorization of this effort by the United States would not extend to similar claims by other nations, to the extent they may exist now or in the future.

The Republic of Panama is committed to assisting the United States in facilitating the destruction of the eight chemical munitions.

By letter dated November 18, 2013, DoD notified Congress, consistent with section 321 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261), that DoD plans to enter into discussions with the Republic of Panama on the subject of the eight U.S.-origin chemical munitions.

This is a high priority proposal that would allow for destruction of these munitions in the near future. A favorable resolution of this issue would avoid negatively affecting the positive bilateral relationship between the Republic of Panama and the U.S. Government.

Budgetary Implications: 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**
	$30.0	0	0	0	0	Chemical Agents and Munitions Destruction, Defense – Operation and Maintenance	01	01	
Total	$30.0	0	0	0	0				

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

Section 1217, Section 7307(a) of title 10, United States Code, requires congressional approval for the transfer of excess naval vessels to foreign nations in cases where the naval vessels exceed a specified tonnage threshold; this proposal would increase that threshold. This increased threshold would enable excess frigates to be transferred through the standard excess defense article (EDA) processes for major end items without the additional time and administrative burden required to gain congressional legislative approval specific to each potential transfer.

This proposal is part of a package of security cooperation authorities reform proposals intended to consolidate and simplify Title 10 security cooperation authorities as part of a new Chapter 16 in Title 10.

Gaining congressional approval for past transfers of ships exceeding the 3,000 ton threshold has taken an average of 18 months, and required extensive staff work, for each approved transfer; moreover, congressional inaction in response to proposed transfers has, in many instances, prevented such transfers altogether. Advanced notification to Congress is already required for the transfer of Excess Defense Articles (EDA) valued (in terms of original acquisition cost) at $7,000,000 or more (22 U.S.C. 2321J, Authority to Transfer Excess Defense Articles); therefore, naval vessel transfers affected by this proposal would still be notified to Congress, but would not require specific statutory approval.

The Oliver Hazard Perry class frigates still in the U.S. Navy inventory will be offered for transfer through the Excess Defense Articles (EDA) authority during the next few years. This proposal will speed the disbursement of these vessels through the EDA process by avoiding a long and cumbersome administrative process required for ships that exceed the threshold under 10 U.S.C. . The 3,000 ton threshold has been in place since 1976. The first frigate of the Oliver Hazard Perry class was commissioned in 1977.

Budget Implications: This proposal is neutral in its impact to the budget. The proposal merely raises the tonnage threshold for requiring an act of Congress to effect a transfer.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Dept of Defense	0	0	0	0	0				

Changes to Existing Law: This section would make the following change in existing law:

TITLE 10, UNITED STATES CODE

****

CHAPTER 633—NAVAL VESSELS

****

§7307. Disposals to foreign nations

(a) LARGER OR NEWER VESSELS.—A naval vessel that is in excess of ~~**3,000**~~ **4,500** tons or that is less than 20 years of age may not be disposed of to another nation (whether by sale, lease, grant, loan, barter, transfer, or otherwise) unless the disposal of that vessel, or of a vessel of the class of that vessel, is authorized by law enacted after August 5, 1974. A lease or loan of such a vessel under such a law may be made only in accordance with the provisions of chapter 6 of the Arms Export Control Act (22 U.S.C. 2796 et seq.) or chapter 2 of part II of the Foreign

Assistance Act of 1961 (22 U.S.C. 2311 et seq.). In the case of an authorization by law for the disposal of such a vessel that names a specific vessel as being authorized for such disposal, the Secretary of Defense may substitute another vessel of the same class, if the vessel substituted has virtually identical capabilities as the named vessel. In the case of an authorization by law for the disposal of vessels of a specified class, the Secretary may dispose of vessels of that class pursuant to that authorization only in the number of such vessels specified in that law as being authorized for disposal.

(b) OTHER VESSELS.—(1) A naval vessel not subject to subsection (a) may be disposed of to another nation (whether by sale, lease, grant, loan, barter, transfer, or otherwise) in accordance with applicable provisions of law, but only after—

(A) the Secretary of the Navy notifies the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives in writing of the proposed disposition; and

(B) 30 days of continuous session of Congress have expired following the date on which such notice is sent to those committees.

(2) For purposes of paragraph (1)(B), 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 of more than 3 days to a day certain are excluded in the computation of such 30-day period.

Section 1218 would extend the Department's authority to provide Weapons of Mass Destruction (WMD) defense and response preparedness training and equipment to military and civilian organizations of key international partners, such as those bordering Syria, through September 30, 2021. The authority has wide-ranging application and has been previously used to provide relevant assistance to Iraqi, Lebanese, Moroccan, Kenyan, and Turkish personnel, among others. It resides under section 1204 of the National Defense Authorization Act for Fiscal Year 2014 (FY14 NDAA) and has an expiration date of September 30, 2019.

The FY14 NDAA was enacted on December 26, 2013. The program carried out under section 1204 of that Act enables long-term partner engagements of 5 years to ensure the development of comprehensive, whole-of-government, and durable capabilities for their own and their neighbors' benefit. There are currently twenty eight countries where Department of Defense (DoD) requirements exists. If the section 1204 authority were to expire on September 30, 2019, DoD would need to terminate those currently authorized activities in certain critically affected countries, such as Albania and the Ukraine. It would also be constrained in providing CWMD assistance to only first responders via alternate authorities. It is therefore crucial for the proposal to secure an extension prior to the FY18 NDAA to prevent lapses in program planning.

Due to the potential for expanding the assistance to other countries in accordance with subsection (b) of section 1204, numerous Geographic Combatant Commands (CCMDs) have expressed a strong interest in exercising section 1204 authorities in their regions. Specifically, four CCMDs have made initial requests for twelve countries. Given the timelines involved in planning and coordinating the training and equipping activities authorized in section 1204, DoD is unable to accommodate any of these requests prior to the current expiration date.

Extending the authority would allow DoD to fully implement the engagements currently planned under section 1204. It would also allow DoD to accommodate the additional requests it has received to exercise that authority.

As on-going events in the Levant demonstrate, the need for the DoD to provide rapid, effective training and equipping support to U.S. allies and partners can arise with little or no notice. Having an existing program that is prepared and experienced at providing that support ensures that the U.S. is prepared to respond quickly and effectively to mitigate any situation that occurs.

This proposal has been coordinated with the Office of the Deputy Assistant Secretary of Defense for Countering Weapons of Mass Destruction, the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the State Department Bureau of International Security and Nonproliferation (ISN), Office of WMD Terrorism, Foreign Consequence Management Program.

Budgetary Implications: 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**
DTRA	4.153	4.232	4.313	4.395	4.397	Operation and Maintenance, Defense-wide	04	240

Changes to Existing Law: This proposal would make the following change to the National Defense Authorization Act for Fiscal Year 2014:

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2014

SEC. 1204. AUTHORITY TO CONDUCT ACTIVITIES TO ENHANCE THE CAPABILITY OF FOREIGN COUNTRIES TO RESPOND TO INCIDENTS INVOLVING WEAPONS OF MASS DESTRUCTION.

(a) AUTHORITY.—The Secretary of Defense may, with the concurrence of the Secretary of State, provide assistance to the military and civilian first responder organizations of countries that share a border with Syria in order to enhance the capability of such countries to respond effectively to potential incidents involving weapons of mass destruction in Syria and the surrounding region.

(b) AVAILABILITY OF AUTHORITY FOR OTHER COUNTRIES.—

(1) IN GENERAL.—If the Secretary of Defense determines, with the concurrence of the Secretary of State, that the Department of Defense should provide the assistance

authorized in subsection (a) to countries other than the countries described in subsection (a), the Secretary of Defense may provide such assistance to such other countries.

(2) LIMITATION.—The Secretary of Defense may not provide assistance under paragraph (1) until the Secretary provides written notification to the congressional defense committees of the Secretary's intention to provide such assistance, together with an explanation of the scope of the assistance and the reasons for providing the assistance.

(c) AUTHORIZED ELEMENTS.—Assistance provided under this section may include training, equipment, and supplies.

(d) AVAILABILITY OF FUNDS.—

(1) FUNDS AVAILABLE.—Amounts for assistance under this section in a fiscal year shall be derived from amounts authorized to be appropriated for the Department of Defense Operation and Maintenance, Defense-wide, and available for the Defense Threat Reduction Agency for such fiscal year.

(2) AVAILABILITY ACROSS FISCAL YEARS.—Amounts available under paragraph (1) may be available for assistance that begins in a fiscal year and ends in the next fiscal year.

(e) NOTICE TO CONGRESS ON CERTAIN ASSISTANCE.—If the amount of assistance to be provided under this section in a fiscal year is anticipated to exceed $4,000,000, the Secretary of Defense shall notify the congressional defense committees in writing of that fact.

(f) INTERAGENCY COORDINATION.—In carrying out this section, the Secretary of Defense shall comply with all applicable requirements for coordination and consultation within the Executive Branch.

(g) REPORTS.—

(1) IN GENERAL.—Not later than 90 days after the authority in subsection (a) is first exercised and 60 days after the end of any fiscal year in which the authority under this section is exercised, the Secretary of Defense shall submit to the appropriate committees of Congress a report setting forth the following:

(A) A list of the countries to which the assistance has been or is being provided under the authority in this section, and a description of the assistance provided to each country under such authority.

(B) A description of how such assistance advances the national security interests of the United States and is consistent with broader United States national security policy and strategy in each country provided assistance and within the applicable region.

(C) The amount of funds used to provide such assistance to each country during the fiscal year covered by the report.

(D) Any other matters the Secretary of Defense considers appropriate.

(2) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.— In this subsection, the term "appropriate committees of Congress" means –

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

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

(h) EXPIRATION.—The authority to provide assistance under this section may not be exercised after September 30, ~~**2019**~~ **2021.**

Section 1219 would extend by two years the authority under section 801 of the National Defense Authorization Act (NDAA) for Fiscal Year 2010 (Public Law 111-84; 123 Stat. 2399), as amended by section 841(a) of the FY 2013 NDAA (Public Law 112-239; 126 Stat. 1845) section 832 of the FY 2014 NDAA (Public Law 113-66; 127 Stat. 814), and section 1214 of the FY 2016 NDAA(Public Law 114-92; 129 Stat. yyyy. Section 801 provides the Department of Defense (DoD) with enhanced authority to acquire products and services produced in countries along a major route of supply to Afghanistan. This proposal would extend the authority under that section by two years, from December 31, 2016, to December 31, 2018.

Extension of authority under section 801 of the FY 2010 NDAA is necessitated by the ongoing and emerging U.S. mission in the region. Extension of authority under section 801 would support U.S. counterterrorism operations by promoting stability in the region through U.S.-led efforts to help the growth of the Afghan economy and countries in the Central Asia region.

This authority is an important tool for accessing the route of supply to Afghanistan by maintaining our established relationships with Northern Distribution Network (NDN) countries. Inattention to relationships may compromise our freedom of movement in or through a region for future security efforts or humanitarian response by U.S. Government agencies. In addition, the procurement of supplies, services, and construction material from NDN countries will provide economic opportunities and bolster stability in the region.

The engagement in Afghanistan remains a top propriety for the United States Central Command (USCENTCOM). DoD conducted a successful transition from combat to stability operations, and DoD continues to help the Afghans to build and mature a capable and sustainable Afghan National Security Force (ANSF). Today, Afghans are in the lead for all security operations and they have the capability to provide for the security of their people on a daily basis. However, they do still need help with sustainment; and that includes resupply operations, particularly to remote or mountains areas. DoD will need to continuously work closely with Afghans and countries along a major route of supply to Afghanistan to enable their success and stability in the region.

Budget Implications: This proposal to extend the authority would not increase costs to the Government because this proposal only addresses procurement processes. This proposal has positive fiscal implications, such as increasing the local procurement of goods, which will decrease overall U.S. transportation costs and risks. Shipping goods from Europe or the United States to Afghanistan is very costly, requires multiple modes of transportation, and relies on uninterrupted throughput in a number of diverse facilities (ports, rails, roads, and air) in many different countries, while dealing with numerous customs services. By reducing the distance,

complexity, risk, and cost involved in resupplying forces in Afghanistan, the United States will gain a strategic advantage in that effort.

Changes to Existing Law: This proposal would make the following change to section 801 of the FY 2010 NDAA (P.L. 111-84), as most recently amended section 2814 of the FY 2016 NDAA (P.L. 114-92):

SEC. 801. TEMPORARY AUTHORITY TO ACQUIRE PRODUCTS AND SERVICES PRODUCED IN COUNTRIES ALONG A MAJOR ROUTE OF SUPPLY TO AFGHANISTAN.

(a) IN GENERAL.—In the case of a product or service to be acquired in support of military or stability operations in Afghanistan for which the Secretary of Defense makes a determination described in subsection (b), the Secretary may conduct a procurement in which—

(1) competition is limited to products or services that are from one or more countries along a major route of supply to Afghanistan; or

(2) a preference is provided for products or services that are from one or more countries along a major route of supply to Afghanistan.

(b) DETERMINATION.—A determination described in this subsection is a determination by the Secretary that —

(1) the product or service concerned is to be used—

(A) in the country that is the source of the product or service;

(B) in the course of efforts by the United States or NATO forces to ship goods to or from Afghanistan in support of military or stability operations in Afghanistan;

(C) by the military forces, police, or other security personnel of Afghanistan; or

(D) by the United States or coalition forces in Afghanistan if the product or service is from a country that has agreed to allow the transport of coalition personnel, equipment, and supplies;

(2) it is in the national security interest of the United States to limit competition or provide a preference as described in subsection (a) because such limitation or preference is necessary—

(A) to reduce overall United States transportation costs and risks in shipping goods in support of military or stability operations in Afghanistan;

(B) to encourage countries along a major route of supply to Afghanistan to cooperate in expanding supply routes through their territory in support of military or stability operations in Afghanistan; or

(C) to help develop more robust and enduring routes of supply to Afghanistan; and

(3) limiting competition or providing a preference as described in subsection (a) will not adversely affect—

(A) military or stability operations in Afghanistan; or

(B) the United States industrial base.

(c) PRODUCTS AND SERVICES FROM A COUNTRY ALONG A MAJOR ROUTE OF SUPPLY TO AFGHANISTAN.—For the purposes of this section:

(1) A product is from a country along a major route of supply to Afghanistan if it is mined, produced, or manufactured in a covered country.

(2) A service is from a country along a major route of supply to Afghanistan if it is performed in a covered country by citizens or permanent resident aliens of a covered country.

(d) COVERED COUNTRY DEFINED.—In this section, the term "covered country" means Georgia, Kyrgyzstan, Pakistan, Armenia, Azerbaijan, Kazakhstan, Tajikistan, Uzbekistan, or Turkmenistan.

(e) CONSTRUCTION WITH OTHER AUTHORITY.—The authority provided in subsection (a) is in addition to the authority set forth in section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 266; 10 U.S.C. 2302 note).

(f) TERMINATION OF AUTHORITY.—The Secretary of Defense may not exercise the authority provided in subsection (a) after December 31, ~~**2016**~~ **2018**.

Section 1220, as provided in section 51 of the Arms Export Control Act (AECA), the Special Defense Acquisition Fund (SDAF) is a revolving fund that is used by the Secretary of Defense, in consultation with the Secretary of State, to finance the acquisition of defense articles and defense services in anticipation of their future transfer to foreign governments and international organizations in accordance with the AECA, the Foreign Assistance Act of 1961 (FAA), or as otherwise authorized by law. When the articles and services are transferred, the proceeds from the transfer are returned to the SDAF and used to finance subsequent purchases.

This proposal would increase the allowable size of the SDAF by $1,930 million, permitting the Department of Defense (DoD) to procure and stockpile defense articles and defense services in greater quantity and variety to facilitate rapid transfer of defense articles to meet the urgent requirements of friendly foreign countries. This proposal would provide the U.S. Government with sufficient authority to procure defense articles and services to meet for anticipated demands, especially those demands to satisfy the urgent military requirements of friendly foreign countries engaged in counterterrorism and counter-insurgency operations, such as counter-Islamic State in Iraq and the Levant (ISIL) operations, and addressing emerging border security challenges. This proposal would allow the Secretary of Defense, in consultation with the Secretary of State, to meet rapidly increasing demand for defense articles to support time-sensitive military requirements of friendly foreign countries.

Over the past decade, the U.S. Government has been asked on a regular basis to provide defense articles to friendly foreign countries, particularly those engaged in counterterrorism operations, on short notice. Prior to recapitalizing the SDAF in 2012, the Department was not funded to purchase defense articles for friendly foreign countries before a Letter of Offer and Acceptance was executed since payment are required in advance of purchase under the laws authorizing foreign military sales. Consequently, when a friendly foreign country needed to procure defense articles immediately, the only option was to withdraw the equipment and

material from U.S. Military Department inventories or divert the production of equipment intended for U.S. forces or other foreign customers. Although the Department was able to meet many of these urgent requirements, it has not always been able to do so in a timely manner.

The SDAF was recapitalized in 2012 to address this issue. Over the past four years, the Department has used the Fund to purchase more than $200 million worth of defense articles and services that have been transferred to more than 30 countries worldwide, including the Governments of Afghanistan, Egypt, Lebanon, Iraq, Italy, Kenya, Mauritania, Tunisia, and Ukraine, among others. Although the Department has been able to use the Fund successfully to support friendly foreign countries, it has not been able to make a measurable impact on urgent partner operational requirements. The primary reason is that the size of the Fund is not large enough to purchase the quantities of equipment and material that are most often requested by friendly foreign countries.

This proposal would provide the Department with a higher ceiling to procure greater quantities and varieties of the types of defense articles that are urgently needed by friendly foreign countries, particularly those engaged in counterterrorism operations, on short notice.

Budget Implications: This proposal would not affect the budget of the Department of Defense.

The SDAF consists of collections from sales of defense articles from the Fund as authorized in the AECA; collections of asset use charges; charges for the proportionate recoupment of nonrecurring research, development, and production costs; and collections from sales of defense articles authorized by the FAA, as amended, together with funds authorized and appropriated or otherwise made available for the purposes of the Fund.

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

Changes to Existing Law: This proposal would make the following changes to section 114 of title 10, United States Code:

TITLE 10, UNITED STATES CODE

§114. Annual Authorization of Appropriations

* * * * * * *

(c)

(1) The size of the Special Defense Acquisition Fund established pursuant to chapter 5 of the Arms Export control Act (22 U.S.C. 2795 et seq.) may not exceed ~~$1,070,000,000~~ $3,000,000,000.

(2) Notwithstanding section 37(a) of the Arms Export Control Act, amounts received by the United States pursuant to subparagraph (A) of section 21(a)(1) of the Act—

(A) shall be credited to the Special Defense Acquisition Fund established pursuant to chapter 5 of that Act, as authorized by section 51(b)(1) of that Act, but subject to the limitation in paragraph (1) and other applicable law; and

(B) to the extent not so credited, shall be deposited in the Treasury as miscellaneous receipts as provided in section 3302(b) of title 31.

Section 1221 would continue the authorization of funds for the operations and activities of the Office of Security Cooperation in Iraq (OSCI) and security assistance teams including life support, transportation and personal security, and facilities renovation and construction in fiscal year 2017. This proposal would continue the authorization of funds for OSCI training activities in support of Iraqi Ministry of Defense and Counter Terrorism Services personnel. These special authorities are not intended to replace Foreign Military Sales (FMS) or Foreign Military Finance Programs (FMF), but to fill gaps which are not covered by these programs, or are not authorized due to the unique nature or structure of the security element.

This proposal is an extension of an existing authority and reflects the importance of a responsible transition from an international coalition-assisted effort to counter ISIL to a normalized and nationally integrated Iraqi security force capable of defending its borders, airspace, and people. The ~~t~~emporary authority demonstrates continuing support to unique elements performing a national security mission. These authorities are intended to responsibly phase US security assistance and cooperation into normalized security cooperation operations.

Budget Implications: The resources reflected in the table below are funded within the FY 2017 President's Overseas Contingency Operations (OCO) Budget request.

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
O&M	85					Operation and Maintenance, Air Force – OCO	04	42G-OCO
Total	85							

Changes to Existing Law: This proposal would make the following changes to section 1215 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 10 U.S.C. 113 note):

SEC. 1237. AUTHORITY TO SUPPORT OPERATIONS AND ACTIVITIES OFTHE OFFICE OF SECURITY COOPERATION IN IRAQ.

(a) AUTHORITY.—The Secretary of Defense may support United States Government transition activities in Iraq by providing funds for the following:

(1) Operations and activities of the Office of Security Cooperation in Iraq.

(2) Operations and activities of security assistance teams in Iraq.

(b) TYPES OF SUPPORT.—The operations and activities for which the Secretary may provide funds under the authority in subsection (a) may include life support, transportation and personal security, and construction and renovation of facilities.

(c) LIMITATION ON AMOUNT.—The total amount of funds provided under the authority in subsection (a) in ~~**fiscal year 2016**~~ **fiscal year 2017** may not exceed $80,000,000.

(d) SOURCE OF FUNDS.—Funds for purposes of subsection (a) for ~~**fiscal year 2016**~~ **fiscal year 2017** shall be derived from amounts available for that fiscal year for operation and maintenance for the Air Force.

(e) COVERAGE OF COSTS OF OSCI IN CONNECTION WITH SALES OF DEFENSE ARTICLES OR DEFENSE SERVICES TO IRAQ.—The President shall ensure that any letter of offer for the sale to Iraq of any defense articles or defense services issued after the date of the enactment of this Act includes, consistent with the provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.), charges sufficient to recover the costs of operations and activities of security assistance teams in Iraq in connection with such sale.

(f) ADDITIONAL AUTHORITY FOR ACTIVITIES OF OSCI.—

(1) IN GENERAL.—During ~~**fiscal year 2016**~~ **fiscal year 2017**, the Secretary of Defense, with the concurrence of the Secretary of State, may authorize the Office of Security Cooperation in Iraq to conduct training activities in support of Iraqi Ministry of Defense and Counter Terrorism Service personnel at a base or facility of the Government of Iraq to address capability gaps, integrate processes relating to intelligence, air sovereignty, combined arms, logistics and maintenance, and to manage and integrate defense-related institutions.

(2) REQUIRED ELEMENTS OF TRAINING.—The training conducted under paragraph (1) shall include elements that promote the following:

(A) Observance of and respect for human rights and fundamental freedoms.

(B) Military professionalism.

(C) Respect for legitimate civilian authority within Iraq.

(g) REPORTS.—

(1) IN GENERAL.—Not later than September 30, 2015, and every 180 days thereafter until the authority in this section expires, the Secretary of Defense shall, in consultation with the Secretary of State, submit to the appropriate committees of Congress a report on the activities of the Office of Security Cooperation in Iraq.

(2) ELEMENTS.—Each report under this subsection shall include the following:

(A) A current description of capability gaps in the security forces of Iraq, including capability gaps relating to intelligence matters, protection of Iraq airspace, and logistics and maintenance, and a current description of the extent, if any, to which the Government of Iraq has requested assistance in addressing such capability gaps.

(B) A current description of the activities of the Office of Security Cooperation in Iraq and the extent, if any, to which the programs conducted by the Office in conjunction with other United States programs (such as the Foreign Military Financing program, the Foreign Military Sales program, and the assistance provided pursuant to section 1236 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015 (Public

Law 113–291)) will address the capability gaps described pursuant to subparagraph (A).

(C) A current description of how the activities of the Office of Security Cooperation in Iraq are coordinated with, and complement and enhance, the assistance provided pursuant to section 1236 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015.

(D) A current description of end use monitoring programs, and any other programs or procedures, used to improve accountability for equipment provided to the Government of Iraq.

(E) A current description of the measures of effectiveness used to evaluate the activities of the Office of the Security Cooperation in Iraq, and an analysis of any determinations to expand, alter, or terminate specific activities of the Office based on such evaluations.

(F) A current evaluation of the effectiveness of the training described in subsection (f)(2) in promoting respect for human rights, military professionalism, and respect for legitimate civilian authority in Iraq.

(3) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term 'appropriate committees of Congress' means—

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

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

Section 1222, Section 1208 of the Fiscal Year (FY) 2005 National Defense Authorization Act (NDAA) authorized the Secretary of Defense (SecDef) to expend up to a certain amount annually in Operation and Maintenance (O&M) funds made available under Title XV of the Act (Overseas Contingency Operations) to support foreign forces, irregular forces, groups, or individuals engaged in facilitating or acting in support of combating terrorism operations conducted by U.S. Special Operations Forces (USSOF). This proposal would extend the authority through FY 2019.

When first enacted, section 1208 authorized the SecDef to expend up to $25 million annually through FY 2007. The NDAA for FY 2008 extended section 1208 authority through FY 2010 and modified the reporting requirements. The NDAA for FY 2009 further extended the authority through FY 2013, increased the annual funding limit to $35 million, clarified the congressional notification requirement, changed the title to reflect support to "Special" (rather than "Military") Operations, and added the requirement for Chief of Mission concurrence. The NDAA for FY 2010 increased the annual funding limit to $40 million and further modified the notification and annual reporting requirements. The NDAA for FY 2011 increased the annual funding limit to $45 million. The NDAA for FY 2012 further extended the authority through FY 2015, increased the annual funding limit to $50 million, struck the requirement to fund support only with Overseas Contingency Operations O&M appropriations, and directed the SecDef to provide a report on future authorities required by USSOF. The NDAA for FY 2015 further extended the authority through FY 2017 and increased the annual funding limit to $75 million. Section 8134 of the Consolidated and Further Continuing Appropriations Act, 2015 (PL 113-

235) directed that the defense committees be notified 15 days prior to initiating support or expanding support under section 1208.

The Secretary of Defense exercises this authority and operations are funded through the U.S. Special Operations Command (USSOCOM) with O&M funds in accordance with the procedures established by the Secretary of Defense on March 29, 2005, as further implemented by USSOCOM regulation.

The application of section 1208 authority continues to be indispensable to Special Operations forces in volatile regions from Southwest Asia across the Middle East region to the African continent where terrorist networks have blossomed and continue to strike or threaten U.S. personnel, facilities, and interests. Section 1208 authority provides the only means by which USSOF can provide critical enabling support so as to leverage successfully the unique access, placement, language, ethnicity, and skill sets of willing partners (both national and irregular forces) to achieve the desired effects against the enemy. This is particularly important as the terrorist networks have expanded their reach into geographic havens where USSOF has limited access and host nations are financially, politically, or militarily unable to confront the burgeoning threat effectively.

Reflecting this trend, requirements for use of section 1208 authority increased dramatically over the past several years, forcing DoD to prioritize among programs to remain within the previous $50 million cap. The cap increase enacted in the NDAA for FY 2015 (to $75 million) was critical in meeting increased operational demand while retaining a measure of operational flexibility to meet emerging requirements through FY 2015 and into FY 2016. Congress correctly recognized the high potential for continued growth of the program and increased the cap to $85 million in the FY 2016 NDAA that will allow for enhanced flexibility to address emerging threats.

During FY 2015, USSOCOM initiated an assessment process for all ongoing section 1208 programs. The assessments – written by the executing USSOF HQ, coordinated with the relevant combatant command and USSOCOM, with a copy furnished to OSD – are designed to ensure that ongoing programs remain focused on definitive combating terrorism goals and objectives, and to address the strategic and operational planning considerations of a future off-ramp of section 1208 support. With the first round of assessments nearing completion, initial feedback indicates that successful programs achieve tactical success in 12-24 months and tend to endure for as long as the threat exists and SecDef-approved operational authority to address that threat is in place. Reasons for programs being off-ramped have included that the operational authority terminated, turmoil or unrest restricted USSOF access to the partner force, or operations evolved to a point where use of section 1208 authority was no longer appropriate. From a historical/statistical perspective, programs that were approved over the last three years will continue well past the current FY 2017 expiration date. As such, an extension of the authority through FY 2019 during the 2017 legislative cycle is necessary to ensure continuity of the authority and to ensure that the authority remains to enable carrying on the fight.

Budget Implications: The resources reflected in the table below are funded within the FY 2017 President's Overseas Contingency Operations (OCO) Budget request.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
SOCOM	85.0	85.0	85.0			Operation and Maintenance, Defense-Wide OCO	01	1PL2	012413BB
Total	85.0	85.0	85.0						

Changes to Existing Law: This section would make the following changes to section 1208 of the Ronald W. Reagan National Defense Authorization Act for FY 2005:

SEC. 1208. SUPPORT OF SPECIAL OPERATIONS TO COMBAT TERRORISM.

* * * * *

(h) PERIOD OF AUTHORITY.—The authority under subsection (a) is in effect during each of fiscal years 2005 through ~~2017~~ 2019.

* * * * * * *

Section 1223 would authorize $3,448,715,000 for the Afghanistan Security Forces Fund (ASFF) for fiscal year (FY) 2017 and continue certain established provisions applicable to the ASFF, including use of the funds, transfer authority, and acceptance of contributions. ASFF funding is necessary to attain U.S. national objectives in Afghanistan. This investment supports operations by and sustainment of affordable and sustainable Afghan National Defense and Security Forces at an authorized level of 352,000 plus 30,000 Afghan Local Police that protect the population, foster the rule of law, prevent the establishment of terrorist safe havens and are a reliable long-term counterterrorism partner for the United States. This proposal would allow the Department of Defense to take control of material not wanted or needed by the Afghan National Defense and Security Forces because it was damaged, procured in error, or otherwise would not be serviceable. Disposal of this material would be by the procuring Service through authorities already available to that Service for the disposition of its own excess materiel.

Budget Implications: The resources reflected in the table below are funded within the FY 2017 President's Overseas Contingency Operations (OCO) Budget request.

RESOURCE REQUIREMENTS ($MILLIONS)							
	FY 2017	**FY 2018**	**FY 2019**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
ASFF	$3,448.7			Afghanistan Security Forces		ASFF	

				Fund			
Total	$3,448.7						

Changes to Existing Law: This proposal would not make any changes to the text of existing law.

Section 1224, Section 1211 of the National Defense Authorization Act (NDAA) for Fiscal Year 2006 (Public Law 109-163) prohibits the Secretary of Defense from procuring goods or services, through a contract or any subcontract (at any tier), from any Communist Chinese military company if those goods or services are on the munitions list of the International Traffic in Arms Regulations. The term "munitions list of the International Trafficking in Arms Regulations" is currently defined in the statute as the United States Munitions List (USML), which imposes controls on defense articles and defense services.

The Administration is revising the USML in order to protect and enhance U.S. national security interests. Items remaining on the USML are those that provide the United States with a critical military or intelligence advantage or otherwise warrant such controls; all other military items are being moved to the jurisdiction of the "600 series" of the Commerce Control List, which will increase allied access to such items. This will enhance U.S. national security by: (i) improving interoperability of U.S. military forces with allied countries; (ii) strengthening the U.S. industrial base by, among other things, reducing the incentives for foreign manufacturers to "design out" and avoid U.S.-origin content and services; and (iii) allowing officials to focus government resources on transactions that pose greater concern. The Administration has concluded that, even though the items moved to the "600 series" are less-sensitive items, they are still military items and should remain prohibited for export to destinations subject to U.S. arms embargoes and, in the case of comparable Communist China-origin items, should remain prohibited from procurement by the Department of Defense.

Consistent with the intent of Congress to prohibit Department of Defense procurement of military items from Communist Chinese military companies, the Department seeks an amendment to Section 1211 of the NDAA for FY 2006 to include military items moved from the USML to the "600 series" of the Commerce Control List. This will ensure the prohibition remains in place for the same universe of items as currently required under Section 1211 and can be implemented in a change to Defense Federal Acquisition Regulations Supplement (DFARS) Clause 225.770. The amendment does not expand or narrow the scope of items subject to the current prohibition. Without an amendment, the Department of Defense could not maintain the prohibition. As a result, legislation is necessary to maintain the current prohibition effectively and more efficiently and to ensure that Communist Chinese-origin military items are not procured by the Department of Defense in order to protect the security of the supply chain for U.S. weapons systems and other defense programs.

Budget Implications:

Resource Requirements ($Millions)

	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line**	**Program Element**

								Item	
DTSA	-	-	-	-	-	O&M, DW	04	200	0901532D8T

Changes to Existing Law: This proposal would make the following changes to section 1211 of National Defense Authorization Act (NDAA) for Fiscal Year 2006 (Public Law 109-163):

SEC. 1211. PROHIBITION ON PROCUREMENTS FROM COMMUNIST CHINESE MILITARY COMPANIES.

(a) PROHIBITION.–The Secretary of Defense may not procure goods or services described in subsection (b), through a contract or any subcontract (at any tier) under a contract, from any Communist Chinese military company.

(b) GOODS AND SERVICES COVERED. – For purposes of subsection (a), the goods and services described in this subsection are goods and services on the munitions list of the International ~~Trafficking~~ Traffic in Arms Regulations or in the 600 series of the control list of the Export Administration Regulations, other than goods or services procured –

(1) in connection with a visit by a vessel or an aircraft of the United States Armed Forces to the People's Republic of China;

(2) for testing purposes; or

(3) for purposes of gathering intelligence.

(c) WAIVER AUTHORIZED.-The Secretary of Defense may waive the prohibition in subsection (a) if the Secretary determines that such a waiver is necessary for national security purposes and the Secretary submits to the congressional defense committees a report described in subsection (d) not less than 15 days before issuing the waiver under this subsection.

(d) REPORT.-The report referred to in subsection (c) is a report that identifies the specific reasons for the waiver issued under subsection (c) and includes recommendations as to what actions may be taken to develop alternative sourcing capabilities in the future.

(e) DEFINITIONS. – In this section:

(1) The term "Communist Chinese military company" has the meaning provided that term by section 1237(b)(4) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (50 U.S.C. 1701 note).

(2) The term "munitions list of the International ~~Trafficking~~ Traffic in Arms Regulations" means the United States Munitions List contained in part 121 of subchapter M or title 22 of the Code of Federal Regulations.

(3) The term "600 series of the control list of the Export Administration Regulations" means the 600 series of the Commerce Control List contained in Supplement No. 1 to part 774 of subtitle B of title 15 of the Code of Federal Regulations.

Section 1225 would extend the Global Security Contingency Fund (GSCF) authority and availability of funds through September 30, 2021, thus allowing the Secretaries of Defense and State to continue to address critical partner capacity-building gaps that cannot otherwise be addressed.

This proposal would make modifications to the GSCF statute that would extend the authority an additional four years and change the month that the annual report must be provided to Congress from October to November, thus allowing an additional 30 days beyond the end of the fiscal year to compile and submit the annual report.

The Department of State will submit an identical proposal to Congress.

Budget Implications: The Department is not requesting additional funds for the Global Security Contingency Fund; as a result, budgetary implications of this proposal are neutral.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Dept of Defense	0	0	0	0	0				

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

National Defense Authorization Act for Fiscal Year 2014

SEC. 1202. GLOBAL SECURITY CONTINGENCY FUND.

(a) ESTABLISHMENT.—There is established on the books of the Treasury of the United States an account to be known as the `Global Security Contingency Fund' (in this section referred to as the `Fund').

(b) AUTHORITY.—Notwithstanding any other provision of law (other than the provisions of section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) and the section 620J of such Act relating to limitations on assistance to security forces (22 U.S.C. 2378d)), amounts in the Fund shall be available to either the Secretary of State or the Secretary of Defense to provide assistance to countries or regions designated by the Secretary of State, with the concurrence of the Secretary of Defense, for purposes of this section, as follows:

(1) To enhance the capabilities of a country's national military forces, or other national security forces that conduct border and maritime security, internal defense, or counterterrorism operations, as well as the government agencies responsible for such forces, to—

(A) conduct border and maritime security, internal defense, or counterterrorism operations; and

(B) participate in or support military, stability, or peace support operations consistent with United States foreign policy and national security interests.

(2) For the justice sector (including law enforcement and prisons), rule of law programs, and stabilization efforts in a country in cases in which the Secretary of State, in consultation with the Secretary of Defense, determines that conflict or instability in a country or region challenges the existing capability of civilian providers to deliver such assistance.

(c) TYPES OF ASSISTANCE.—

(1) AUTHORIZED ELEMENTS.—A program to provide the assistance under subsection (b)(1) may include the provision of the following:

(A) Equipment, including routine maintenance and repair of such equipment.

(B) Supplies.

(C) With respect to the amounts in the Fund appropriated or transferred into the Fund after the date of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, small scale construction not exceeding $750,000 on a per-project basis.

(D) Training.

(2) REQUIRED ELEMENTS.—A program to provide the assistance under subsection (b)(1) shall include elements that promote—

(A) observance of and respect for human rights and fundamental freedoms; and

(B) respect for legitimate civilian authority within the country concerned.

(d) FORMULATION AND APPROVAL OF ASSISTANCE PROGRAMS.—

(1) SECURITY PROGRAMS.—The Secretary of State and the Secretary of Defense shall jointly formulate assistance programs under subsection (b)(1). Assistance programs to be carried out pursuant to subsection (b)(1) shall be approved by the Secretary of State, with the concurrence of the Secretary of Defense, before implementation.

(2) JUSTICE SECTOR AND STABILIZATION PROGRAMS.—The Secretary of State, in consultation with the Secretary of Defense, shall formulate assistance programs under subsection (b)(2). Assistance programs to be carried out under the authority in subsection (b)(2) shall be approved by the Secretary of State, with the concurrence of the Secretary of Defense, before implementation.

(e) RELATION TO OTHER AUTHORITIES.—The authority to provide assistance under this section is in addition to any other authority to provide assistance to foreign nations. The administrative authorities of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) shall be available to the Secretary of State with respect to funds available to carry out this section.

(f) TRANSFER AUTHORITY.—

(1) DEPARTMENT OF DEFENSE FUNDS.—Funds authorized to be appropriated to the Department of Defense for operation and maintenance for Defense-wide activities may be transferred to the Fund by the Secretary of Defense in accordance with established procedures for reprogramming under section 1001 of this Act and successor provisions of law. Amounts transferred under this paragraph shall be merged with funds otherwise made available under this section and remain available until expended as provided in subsection (i) for the purposes specified in subsection (b).

(2) LIMITATION.—The total amount of funds transferred to the Fund in any fiscal year from the Department of Defense may not exceed $200,000,000.

(3) TRANSFERS TO OTHER ACCOUNTS.—Funds available to carry out assistance authorized by this section may be transferred to an agency or account determined most appropriate to facilitate the provision of assistance authorized by this section.

(4) RELATION TO OTHER TRANSFER AUTHORITIES.—The transfer authorities in paragraphs (1) and (3) are in addition to any other transfer authority available to the Department of Defense.

(g) ALLOCATION OF CONTRIBUTIONS TO ASSISTANCE.—The contribution of the Secretary of State to an activity under the authority in subsection (b) shall be not less than 20 percent of the total amount required for such activity. The contribution of the Secretary of Defense to such activity shall be not more than 80 percent of the total amount required.

(h) AUTHORITY TO ACCEPT GIFTS.—The Secretary of State may use money, funds, property, and services accepted pursuant to the authority of section 635(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2395(d)) to fulfill the purposes of subsection (b).

(i) AVAILABILITY OF FUNDS.—

(1) IN GENERAL. Except as provided in paragraph (2), amounts in the Fund shall remain available until September 30, ~~2017~~2021, except that amounts appropriated or transferred to the Fund before that date shall remain available for obligation and expenditure after that date for activities under programs commenced under subsection (b) before that date.

(2) EXCEPTION.—Amounts appropriated and transferred to the Fund before the date of the enactment of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization act for Fiscal Year 2015 shall remain available for obligation and expenditure after September 30, 2015, only for activities under programs commenced under subsection (b) before September 30, 2015.

(j) ADMINISTRATIVE EXPENSES.—Amounts in the Fund may be used for necessary administrative expenses in connection with the provision of assistance under this section.

(k) DETAIL OF PERSONNEL.—The head of an agency of the United States Government may detail personnel to the Department of State to carry out the purposes of this section, with or without reimbursement for all or part of the costs of salaries and other expenses associated with such personnel.

(l) NOTICES TO CONGRESS.—Not less than 30 days before initiating an activity under a program of assistance under subsection (b), the Secretary of State and the Secretary of Defense shall jointly submit to the specified congressional committees a notification that includes the following:

(1) Fund under subsection (f) or any other authority, including the original source of the funds.

(2) A detailed justification for the total anticipated program for each country, including total anticipated costs and the specific activities contained therein.

(3) The budget, execution plan and timeline, and anticipated completion date for the activity.

(4) A list of other security-related assistance or justice sector and stabilization assistance that the United States is currently providing the country concerned and that is related to or supported by the activity.

(5) Such other information relating to the program or activity as the Secretary of State or Secretary of Defense considers appropriate.

(m) GUIDANCE AND PROCESSES FOR EXERCISE OF AUTHORITY.—Not later than 15 days after the date on which guidance and processes for implementation of the authority in subsection (b) have been issued, the Secretary of State and the Secretary of Defense shall jointly submit a report to the specified congressional committees on such guidance and processes. The Secretary of State and Secretary of Defense shall jointly submit additional reports not later than 15 days after the date on which any future modifications to the guidance and processes for implementation of the authority in subsection (b) are issued.

(n) ANNUAL REPORTS.—Not later than ~~October~~ November 30 each year until the expiration of the authority in subsection (b) pursuant to subsection (p), the Secretary of State and the Secretary of Defense jointly shall submit to the specified congressional committees a report on the following:

(1) The obligation of funds from, and transfer of funds into, the Fund during the preceding fiscal year.

(2) The status of programs and activities authorized under this section during the preceding fiscal year.

(o) SPECIFIED CONGRESSIONAL COMMITTEES.—In this section, the term "specified congressional committees" means—

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

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

(p) Expiration.—The authority under this section may not be exercised after September 30, ~~2017~~ 2021. An activity under a program authorized by subsection (b) commenced before that date may be completed after that date, but only using funds available for fiscal years ~~2012 through 2017~~ ending on or before that date and subject to the requirements contained in paragraphs (1) and (2) of subsection (i)

Section 1226 would provide contracting officers who support the United States Africa Command (USAFRICOM) mission with an enhanced procurement authority to limit competition by giving preference to products and services produced in areas where the United States has long-term agreements with the host nation. Congress, in section 1263 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (P. L. 113-291), previously provided the Department with enhanced authority to acquire products and services produced in the Republic of Djibouti in support of Department of Defense (DoD) activities in the USAFRICOM area of responsibility. The Joint Explanatory Statement to accompany the NDAA for FY 2015 included the following statement for section 1263: "Should the Secretary secure additional long-term agreements that provide for basing arrangements to support U.S. military operations, particularly counterterrorism operations, support to U.S. Department of State evacuation requirements, or force protection operational requirement of AFRICOM, we will consider a comparable acquisition preference."

The 2015 National Military Strategy tasks the Joint Force to preserve alliances, expand partnerships, and maintain a global stabilizing presence in support of international security and stability, placing emphasis on the presence of U.S. military forces in key locations around the world. This authority is a critical contributor in capitalizing on opportunities for engagement and strategic positioning of forces for crisis response. The USAFRICOM 2016 Theater Posture Plan highlights the perpetual risk of instability and conflict due to economic challenges, further complicated by the threat of violent extremist organizations. It identifies location priorities by region, aligned to objectives in the Theater Campaign Plan. To protect and advance U.S. national security interests in Africa, USAFRICOM focuses on countries where the United States has long-term agreements, which serve as critical enduring hubs in support of U.S. operations. The proposal is limited to those countries that currently have long-term agreements, currently 11 countries in Africa. In order for this authority to be used beyond the countries with which we currently have long-term agreements, the State Department would lead the negotiations to secure the long-term agreement necessary for this authority's use.

USAFRICOM focuses its efforts to achieve both short- and long-term counter-terrorism objectives by strengthening an enduring strategic partnership with multiple African Partner nations. In recent years, al-Qa'ida activities in northern and western Africa, compounded by other extremist groups such as Boko Haram in Nigeria and al-Shabaab in Somalia, have gained traction and collaboration in these African regions. These activities make countering violent extremist groups a growing challenge for USAFRICOM on the continent.

This authority is crucial in supporting the USAFRICOM Theater Campaign Plan. The United States must maintain assured access and freedom of movement throughout the USAFRICOM area of responsibility. Purchasing products and services from nations where the United States has long-term agreements, furthers Theater Campaign Plan objectives by providing economic opportunities for the host nations and employment opportunities for its citizens.

The requested authority is in line with the strategic guidance provided in the National Security Strategy, the National Military Strategy, the Presidential Policy Directive for Political and Economic Reform in the Middle East and North Africa (PPD 13), and the USAFRICOM Theater Campaign Plan.

Budget Implications: This proposal would grant contracting officers the authority to limit competition by providing preferences to products and services from covered African countries in order to meet valid government requirements. It requires no additional appropriation of funds. It results in no savings. A budget table is not applicable and has not been provided.

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

Section 1227 would extend authorization for the provision of defense services and the transfer of defense articles from DoD stocks to the Afghanistan military and security forces without reimbursement from the government of Afghanistan through December 2017.

Budget Implications: 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**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
O&M-A	$250			Operation and Maintenance, Army OCO	01	135	
Total	$250						

Changes to Existing Law: This proposal would make the following changes to section 1222 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1992):

SEC. 1231. AUTHORITY TO TRANSFER DEFENSE ARTICLES AND PROVIDE DEFENSE SERVICES TO THE MILITARY AND SECURITY FORCES OF AFGHANISTAN.

(a) NONEXCESS ARTICLES AND RELATED SERVICES.—The Secretary of Defense may, with the concurrence of the Secretary of State, transfer nonexcess defense articles from the stocks of the Department of Defense, without reimbursement from the Government of Afghanistan, and provide defense services in connection with the transfer of such defense articles, to the military and security forces of Afghanistan to support the efforts of those forces to restore and maintain peace and security in that country.

(b) LIMITATIONS.—

(1) VALUE.—The aggregate replacement value of all defense articles transferred and defense services provided in connection with such defense articles under subsection (a) in any fiscal year may not exceed $250,000,000.

(2) SOURCE OF TRANSFERRED ARTICLES.—The authority under subsection (a) may only be used for defense articles that—

(A) were present in Afghanistan as of the date of the enactment of this Act;

(B) immediately before transfer were in use to support operations in Afghanistan; and

(C) are no longer required by United States forces in Afghanistan.

(c) APPLICABLE LAW.—Any defense articles transferred or defense services provided under the authority of subsection (a) shall be subject to the authorities and limitations applicable to excess defense articles under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j), other than the authorities and limitations in subsections (b)(1)(B), (e), (f), and (g) of such section.

(d) REPORT REQUIRED BEFORE EXERCISE OF AUTHORITY.—

(1) IN GENERAL.—The Secretary of Defense may not exercise the authority under subsection (a) until 15 days after the Secretary submits to the appropriate committees of Congress a report on the equipment and other property of the Department of Defense in Afghanistan.

(2) ELEMENTS.—The report required under paragraph (1) shall include the following:

(A) A description of the process for inventorying equipment and property, including defense articles, in Afghanistan owned by the Department of Defense, including equipment and property owned by the Department and under the control of contractors in Afghanistan.

(B) An estimate of the types and quantities of equipment and property of the Department of Defense, including defense articles, anticipated to be withdrawn from Afghanistan in connection with the drawdown of United States military forces from Afghanistan between the date of the enactment of this Act and December 31, 2014, including equipment and property owned by the Department and under the control of contractors in Afghanistan.

(e) NOTICE ON EXERCISE OF AUTHORITY.—

(1) IN GENERAL.—The Secretary of Defense may not transfer defense articles or provide defense services under subsection (a) until 15 days after the date on which the Secretary of Defense, with the concurrence of the Secretary of State, submits to the appropriate committees of Congress notice of the proposed transfer of defense articles and provision of defense services.

(2) ELEMENTS.—A notice under paragraph (1) shall include the following:

(A) A description of the amount and types of defense articles to be transferred and defense services to be provided.

(B) A statement describing the current value of the defense articles to be transferred and the estimated replacement value of such articles.

(C) An identification of the element of the military or security force that is the proposed recipient of the defense articles to be transferred and defense service to be provided.

(D) An identification of the military department from which the defense articles to be transferred are to be drawn.

(E) An assessment of the impact, if any, of the transfer of defense articles on the readiness of units from which the defense articles are to be transferred, and the plan, if any, for mitigating such impact or reimbursing the military department of such units for such defense articles.

(F) An assessment of the ability of the Government of Afghanistan to sustain the costs associated with receiving, possessing, and using the defense articles to be transferred.

(G) A determination and certification by the Secretary of Defense, with the concurrence of the Secretary of State, that—

(i) the proposed transfer of the defense articles to be transferred and the provision of defense services to be provided in connection with such transfer is in the national interest of the United States; and

(ii) such defense articles are required by the military and security forces of Afghanistan to build their capacity to restore and maintain peace and security in that country.

(f) QUARTERLY REPORTS.—

(1) IN GENERAL.—Not later than 90 days after the date of the first transfer of defense articles and provision of defense services under the authority in subsection (a), and at the end of each calendar quarter, if any, thereafter through March 31, 2017, in which the authority in subsection (a) is exercised, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the implementation of the authority in subsection (a). Each report shall include the replacement value of the defense articles transferred pursuant to subsection (a), both in the aggregate and by military department, and defense services provided to the Government of Afghanistan, during the 90-day period ending on the date of such report.

(2) INCLUSION IN OTHER REPORT.—A report required under paragraph (1) may be included in the report required under section 9204 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 122 Stat. 2410) or any follow on report to such other report.

(g) DEFINITIONS.—In this section:

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

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

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

(2) DEFENSE ARTICLES.—The term ‘‘defense articles’’ has the meaning given the term in section 644(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2403(d)).

(3) DEFENSE SERVICES.—The term ‘‘defense services’’ has the meaning given the term in section 644(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2403(f)).

(4) MILITARY AND SECURITY FORCES.—The term ‘‘military and security forces’’ means national armies, national air forces, national navies, national guard forces, police forces, and border security forces, but does not include nongovernmental or irregular forces (such as private militias).

(h) EXPIRATION.—The authority provided in subsection (a) may not be exercised after December 31, ~~2016~~ 2017.

(i) EXCESS DEFENSE ARTICLES.—

(1) ADDITIONAL AUTHORITY.—The authority provided by subsection (a) is in addition to the authority provided by section 516 of the Foreign Assistance Act of 1961.

(2) EXEMPTIONS.—

(A) ~~During fiscal years 2013, 2014, 2015, and 2016~~ Through December 31, 2017, the value of excess defense articles transferred from the stocks of the Department of Defense in Afghanistan pursuant to section 516 of the Foreign Assistance Act of 1961 shall not be counted against the limitation on the aggregate value of excess defense articles transferred contained in subsection (g) of such section.

(B) ~~During fiscal years 2013, 2014, 2015, and 2016~~ Through December 31, 2017, any excess defense articles specified in subparagraph (A) shall not be subject to the authorities and limitations applicable to excess defense articles under section 516 of the Foreign Assistance Act of 1961 contained in subsections (b)(1)(B) and (e) of such section.

Section 1228 will extend an existing authority and reflects decreased resource requirements for Fiscal Year (FY) 2017. This proposal is being submitted to continue the critical special authority to train Iraq security forces (ISF) with training and equipment to counter Islamic State of Iraq and the Levant (ISIL). While the pace of operations is largely dependent on Iraqi action, FY 2017 will likely be focused on the liberation of Mosul and the Northern provinces, continuing to improve security in Anbar province, and perhaps also the reestablishing of border control. To this end, the FY 2017 request is based on a continuation of the previous C-ISIL activities designed to enable Iraqi gains, primarily through training, advising and other related support. We also expect FY 2017 to be a turning point where we can provide greater focus to SOF and counterterrorism forces which will anchor our longer term bilateral defense relationship. In addition to counterterrorism forces, we assess that we will need to provide continued support to local forces including Sunni tribal fighters, Sunni police forces and Peshmerga forces in order to hold areas liberated from ISIL.

Budget Implications: 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**
ITEF	$630.0					Iraq Train and Equip Fund	01		
Total	$630.0						01		

Changes to Existing Law: This proposal would make the following changes to section 1236 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291), as amended:

SEC. 1236. AUTHORITY TO PROVIDE ASSISTANCE TO COUNTER THE ISLAMIC STATE IN IRAQ AND THE LEVANT.

(a) IN GENERAL.—The Secretary of Defense is authorized, in coordination with the Secretary of State, to provide assistance, including training, equipment, logistics support, supplies, and services, stipends, facility and infrastructure repair and renovation, and sustainment, to military and other security forces of or associated with the Government of Iraq, including Kurdish and tribal security forces or other local security forces, with a national security mission, through ~~**December 31, 2016**~~ **September 30, 2018**, for the following purposes:

(1) Defending Iraq, its people, allies, and partner nations from the threat posed by the Islamic State of Iraq and the Levant (ISIL) and groups supporting ISIL.

(2) Securing the territory of Iraq.

(b) NOTICE BEFORE PROVISION OF ASSISTANCE.—Of the funds authorized to be appropriated under this section, not more than 25 percent of such funds may be obligated or expended until not later than 15 days after—

(1) the Secretary of Defense, in coordination with the Secretary of State, submits 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) an identification of such forces designated to receive such assistance; and

(C) the plan for re-training and re-building such forces; and

(2) the President submits 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 supports a larger regional strategy.

(c) PLAN ELEMENTS.—The plan required in subsection (a)(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, 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 date on which 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 provide the appropriate congressional committees and leadership of the House of Representatives and the Senate with a progress report. Such progress report shall, based on the most recent quarterly information, include a description of the following:

(1) Any updates to or changes in the plan, strategy, process, vetting requirements and process as described in subsection (e), and end-use monitoring mechanisms and procedures.

(2) A description of how attacks against United States or coalition personnel are being mitigated, statistics on any such attacks, including ‘‘green-on-blue’’ attacks.

(3) A description of the forces receiving assistance authorized under subsection (a).

(4) A description of the recruitment, throughput, and retention rates of recipients and equipment.

(5) A description of any misuse or loss of provided equipment and how such misuse or loss is being mitigated.

(6) An assessment of the operational effectiveness of the forces receiving assistance authorized under subsection (a).

(7) A description of sustainment support provided to the forces authorized under subsection (a).

(8) A list of projects to repair or renovate facilities authorized under subsection (a).

(9) A statement of the amount of funds expended during the period for which the report is submitted.

(10) An assessment of the effectiveness of the assistance authorized under subsection (a).

(11) A list of the forces or elements of forces that are restricted from receiving assistance under subsection (a), other than the forces or elements of forces with respect to which the Secretary of Defense has exercised the waiver authority under subsection (j), as a result of vetting required by subsection (e) or section 2249e of title 10, United States Code, and a detailed description of the reasons for such restriction, including for each force or element, as applicable, the following:

(A) Information relating to gross violation of human rights committed by such force or element, including the time-frame of the alleged violation.

(B) The source of the information described in subparagraph (A) and an assessment of the veracity of the information.

(C) The association of such force or element with terrorist groups or groups associated with the Government of Iran.

(D) The amount and type of any assistance provided to such force or element by the Government of Iran.

(e) VETTING.—The Secretary of Defense should ensure that prior to providing assistance to elements of any forces described in subsection (a) such elements are appropriately vetted, including at a minimum, by—

(1) conducting assessments of such elements for associations with terrorist groups or groups associated with the Government of Iran; and

(2) receiving commitments from such elements to promote respect for human rights and the rule of law.

(f) DEFINITION.—In this section, the term ‘‘appropriate congressional committees’’ means—

(1) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

(2) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

(g) FUNDING.—Of the amounts authorized to be appropriated ~~**in the National Defense Authorization Act for Fiscal Year 2016**~~ for **Department of Defense** Overseas Contingency Operations ~~**in title XV for fiscal year 2016**~~ **fiscal year 2017**, there are authorized to be appropriated ~~**$750,000,000**~~ **$630,000,000** to carry out this section. Amounts authorized to be appropriated under this subsection are authorized to remain available until ~~**September 30, 2016**~~ **September 30, 2018.**

(h) AUTHORITY TO ACCEPT CONTRIBUTIONS.—The Secretary of Defense may accept and retain contributions, including assistance in-kind, from foreign governments, including the Government of Iraq, to provide assistance authorized under subsection (a). Any funds accepted by the Secretary may be credited to the account from which funds are made available for the

provision of assistance authorized under subsection (a) and may be used for such purpose until expended.

(i) 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.

(j) WAIVER AUTHORITY.—

(1) BY SECRETARY OF DEFENSE.—

(A) IN GENERAL.—For purposes of the provision of assistance pursuant to subsection (a), the Secretary of Defense may waive any provision of law described in subparagraph (B) if the Secretary—

(i) determines that such provision of law would (but for the waiver) prohibit, restrict, delay, or otherwise limit the provision of such assistance; and

(ii) submits to the appropriate congressional committees a notice of and justification for the waiver and the provision of law to be waived.

(B) PROVISIONS OF LAW.—The provisions of law described in this subparagraph are the following:

(i) Any provision of law relating to the acquisition of items and support services.

(ii) Section 40A of the Arms Export Control Act (22 U.S.C. 2780 and 2785).

(C) ADDITIONAL WAIVER AUTHORITY.—

(i) IN GENERAL.—For purposes of the provision of assistance described in subsection (l)(2), the Secretary of Defense may waive any provision of law described in clause (ii) if the Secretary satisfies the requirements described in clauses (i) and (ii) of subparagraph (A) with respect to such waiver.

(ii) PROVISIONS OF LAW.—The provisions of law described in this clause are the following:

(I) Any provision of law described in subparagraph (B).

(II) Any eligibility requirement under section 3 of the Arms Export Control Act (22 U.S.C. 2753).

(III) Any eligibility requirement under chapter 2 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2311 et seq.).

(2) BY PRESIDENT.— The President may waive any provision of law other than a provision of law described in paragraph (1)(B) for purposes of the provision of assistance pursuant to subsection (a) and any provision of law other than a provision of law described in subsection (1)(C) for purposes of the provision of assistance described in subsection (l)(2) if the President determines that it is vital to the national security interests of the United States to waive such provision of law. Such waiver shall not take effect until 15 days after the date on which the President notifies the appropriate congressional committees of such determination and the provision of law to be waived.

(3) REPORT.—

(A) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Dec. 19, 2014] the President shall transmit to the congressional defense committees a report that provides a specific list of provisions of law that need to be waived under this subsection for purposes of the provision of assistance pursuant to subsection (a) and a justification for each such waiver.

(B) UPDATE.—The President shall submit to the congressional defense committees an update of the report required by subparagraph (A) not later than 180 days after the date of the enactment of this Act.

(k) COST-SHARING REQUIREMENT.—

(1) IN GENERAL.—Of the funds authorized to be appropriated under this subsection, not more than 60 percent of such funds may be obligated or expended until not later than 15 days after the date on which the Secretary of Defense certifies to the appropriate congressional committees and leadership of the House of Representatives and the Senate that an amount equal to not less than 40 percent of the amount authorized to be appropriated to carry out this section has been contributed by other countries and entities for the purposes described in subsection (a), which may include contributions of in-kind support for forces described in subsection (a), as determined from October 1, 2014, of which not less than 50 percent of such amount contributed by other countries and entities has been contributed by the Government of Iraq.

(2) EXCEPTION.—The limitation in paragraph (1) shall not apply if the Secretary of Defense determines, in writing, that the national security objectives of the United States will be compromised by the application of the limitation to any such assistance, and notifies the appropriate congressional committees not less than 15 days in advance of the exemption taking effect, including a justification for the Secretary's determination and a description of the assistance to be exempted from the application of such limitation.

(l) ASSESSMENT AND AUTHORITY TO ASSIST DIRECTLY CERTAIN COVERED GROUPS.—

(1) ASSESSMENT.—

(A) IN GENERAL.—Not later than 120 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016 [Nov. 25, 2015], the Secretary of Defense and the Secretary of State shall jointly submit to the appropriate congressional committees an assessment of the extent to which the Government of Iraq is increasing political inclusiveness, addressing the grievances of ethnic and sectarian minorities, and enhancing minority integration in the political and military structures in Iraq.

(B) FACTORS TO BE CONSIDERED IN MAKING ASSESSMENT.— In making the assessment described in subparagraph (A), the Secretary of Defense and the Secretary of State shall consider the following factors:

(i) The extent to which the Government of Iraq is taking steps to reduce support among the Iraqi people for the Islamic State of Iraq and the Levant (ISIL) and improve stability in Iraq.

(ii) The progress of efforts to enact legislation establishing the Iraqi National Guard, particularly in predominantly Sunni regions.

(iii) The extent to which the Government of Iraq is expanding the representation of minorities in adequate numbers in government security organizations and providing for the training and equipping of such forces.

(iv) Whether the Government of Iraq is ending support for Shia militias under the command and control of, or associated with, the Government of Iran, and stopping abuses of elements of the Iraqi population by such militias.

(v) Whether the Government of Iraq is ensuring that supplies, equipment, and weaponry supplied by the United States are appropriately distributed to security forces with a national security mission in Iraq, including the Kurdish Peshmerga, Sunni tribal security forces and local security forces with a national security mission, and, once established, the Iraqi Sunni National Guard.

(vi) Whether the Government of Iraq is addressing grievances regarding the arrest and detention without trial of ethnic and sectarian minorities or is taking steps to prosecute such individuals that are detained in a fair, transparent, and prompt manner.

(vii) Such other factors as the Secretaries consider appropriate.

(C) UPDATE.—The Secretary of Defense and the Secretary of State shall submit to the appropriate congressional committees an update of the assessment required under subparagraph (A) not later than 180 days after the date on which the assessment is submitted to the appropriate congressional committees under subparagraph (A).

(D) SUBMISSION.—The assessment required under subparagraph (A) and the update of the assessment authorized under subparagraph (C) may be submitted as part of the quarterly report required under subsection (d).

(2) ASSISTANCE DIRECTLY TO CERTAIN COVERED GROUPS.—

(A) IN GENERAL.—If the President, taking into account the results of the assessment required under paragraph (1)(A) or the update required under paragraph (1)(C), determines and notifies the appropriate congressional committees that the Government of Iraq has failed to take substantial action to increase political inclusiveness, address the grievances of ethnic and sectarian minorities, and enhance minority integration in the political and military structures in Iraq, the Secretary of Defense, in coordination with the Secretary of State, is authorized to provide, in coordination to the extent practicable with the Government of Iraq, assistance under the authority of subsection (a) directly to the groups described in subparagraph (D) for the purpose of supporting international coalition efforts against ISIL.

(B) ADMINISTRATIVE PROVISIONS.—In carrying out subparagraph (A), the Secretary of Defense may—

(i) re-allocate the amount of assistance authorized under subsection (a) to increase the share of such assistance provided to the groups described in subparagraph (D); and

(ii) exercise the waiver authority provided in subsection (j)(1)(C) with respect to providing assistance to the groups described in subparagraph (D).

(C) COST-SHARING REQUIREMENT INAPPLICABLE.—The cost-sharing requirement of subsection (k) shall not apply with respect to funds that are obligated or expended under this subsection for assistance provided directly to the groups described in subparagraph (D).

(D) COVERED GROUPS.—The groups described in this subparagraph are—

(i) the Kurdish Peshmerga; and

(ii) Sunni tribal security forces, or other local security forces, with a national security mission.

Section 1229 would extend through fiscal year (FY) 2017 current authority for the use of Operation and Maintenance, Defense-wide (O&M D-W) appropriations under the Coalition Support Fund (CSF) authority. The existing requirements and limitations with respect to such authority, including the exemption from the congressional notification requirement of CSF reimbursements for access based on an international agreement, are continued unchanged. This would allow the Department of Defense (DoD) to make routine payments quickly following each quarter once the access provided under the agreement is validated. Congress would maintain visibility over these payments through the CSF quarterly reports.

This proposal would also extend through FY 2017 current authority for use of O&M D-W appropriations under the CSF authority for stability activities in Pakistan's Federally Administered Tribal Areas (FATA). This would allow DoD to focus reimbursements to the Government of Pakistan for stability operations that prevent the reemergence of safe havens within its borders, thereby reducing the operational space of militant groups that target U.S., coalition, and Afghan forces.

Budget Implications: $1.1 billion of this proposal would be funded through O&M, D-W under the FY 2017 Overseas Contingency Operations budget request of which $1.1 billion is for the CSF authority. The remaining portion, specifically funds to reimburse Pakistan for stability operations, would be funded by extending the availability of FY 2016 appropriations.

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
CSF	$1,100	NA	NA	NA	Operation & Maintenance, Defense-Wide	04	DSCA	1002199T
Total	$1,100	NA	NA	NA				

Changes to Existing Law: This proposal would make the following changes to (1) section 1233 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 393), as most recently amended by section 1212 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 129 Stat. 1043), and (2) section 1212(f) of National Defense Authorization Act for Fiscal Year 2016:

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2008

(PUBLIC LAW 110-181), AS AMENDED

SEC. 1233. EXTENSION OF AUTHORITY AND MODIFICATION OF REIMBURSEMENT OF CERTAIN COALITION NATIONS FOR SUPPORT PROVIDED TO UNITED STATES MILITARY OPERATIONS.

(a) AUTHORITY.—From funds made available for the Department of Defense for fiscal year ~~2016~~ 2017 for overseas contingency operations; for operation and maintenance, Defense-wide activities, the Secretary of Defense may reimburse any key cooperating nation for the following:

(1) Logistical and military support provided by that nation to or in connection with United States military and stability operations ~~in Iraq or in Operation Enduring Freedom in Afghanistan~~ in Afghanistan and to counter the Islamic State in Iraq and the Levant.

(2) Logistical, military, and other support, including access, provided by that nation to or in connection with United States military operations described in paragraph (1).

(b) OTHER SUPPORT.—Using funds described in subsection (a)(2), the Secretary of Defense may also assist any key cooperating nation supporting United States military and stability operations ~~in Iraq or Operation Enduring Freedom in Afghanistan~~ in Afghanistan and to counter the Islamic State in Iraq and the Levant through the following:

(1) The provision of specialized training to personnel of that nation in connection with such operations, including training of such personnel before deployment in connection with such operations.

(2) The procurement and provision of supplies to that nation in connection with such operations.

(3) The procurement of specialized equipment and the loaning of such specialized equipment to that nation on a non-reimbursable basis in connection with such operations.

(c) AMOUNTS OF REIMBURSEMENT.—

(1) IN GENERAL.—Reimbursement authorized by subsection (a) may be made in such amounts as the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of the Office of Management and Budget, may determine, based on documentation determined by the Secretary of Defense to adequately account for the support provided.

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

(d) LIMITATIONS.—

(1) LIMITATION ON AMOUNT.—The total amount of reimbursements made under the authority in subsection (a) during fiscal year 2008 may not exceed $1,200,000,000. The aggregate amount of reimbursements made under subsection (a) and support provided under subsection (b) during fiscal year ~~2016~~ 2017 may not exceed ~~$1,160,000,000~~ $1,100,000,000. Of the aggregate amount speficied in the preceding sentence, the total amount of reimbursements made under subsection (a) and support

provided under subsection (b) to Pakistan during ~~fiscal year 2016 may not exceed $900,000,000~~ fiscal year 2017 may not exceed $800,000,000.

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

(3) PROHIBITION ON REIMBURSEMENT OF PAKISTAN FOR SUPPORT DURING PERIODS CLOSED TO TRANSSHIPMENT.—Effective as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2015 [Dec. 29, 2014], funds (including funds from a prior fiscal year that remain available for obligation) may not be used for reimbursements under the authority in subsection (a) for Pakistan for claims of support provided during any period when the ground lines of supply through Pakistan to Afghanistan were closed to the transshipment of equipment and supplies in support of United States military operations in Afghanistan.

(e) NOTICE TO CONGRESS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary of Defense shall notify the appropriate congressional committees not later than 15 days before making any reimbursement under the authority in subsection (a) or providing any support under the authority in subsection (b). In the case of any reimbursement to Pakistan under the authority of this section, such notice shall be made in accordance with the notice requirements under section 1232(b).

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

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

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

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

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

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.

Boron carbide powder. 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.

Europium. 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.

Silicon carbide fibers. 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 1411, 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 1412 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.

Section 1413 would amend the Strategic and Critical Materials Stock Piling Act (Act) to provide greater flexibility in the management of National Defense Stockpile (Stockpile). If enacted, the proposed changes to section 4 of the Act would provide the same authority for the Stockpile Manager to review, acquire, and manage disposal of excess strategic and critical materials for other Federal agencies as exists for materials managed by the Department of Energy. The changes would enable the Stockpile Manager to transfer required materials into inventory at little or no cost. They also would give the Stockpile Manager authority to recover and sell strategic and critical materials that are not in short supply and place the proceeds in the Stockpile Transaction Fund to purchase needed strategic and critical materials.

The proposed amendment to section 15 of the Act would enable the Stockpile Manager to fund qualification of domestically-produced materials. Qualification refers to the inspection, testing, and certification of the facilities used for production, and the materials produced, to insure required specifications are met, such as standards of concentration, purity, or composition. Qualification programs would be executed only after a business case analysis is performed which indicates that qualification program is a better return on investment than traditional stockpiling for a particular material.

Budgetary Implications: The budgetary implications for the changes to the two sections need to be considered separately. For the changes to Section 4, a business case analysis will be conducted prior to execution of any programs under this authority, but in general all of these programs will be cost positive for the Stockpile Transaction Fund. If the Stockpile Manager were allowed to receive excess material that was not required for the Stockpile, excess material could be accepted and then sold, with the revenue returned to the Stockpile Transaction Fund.

For example, the Army typically generates at least 500 kg of excess germanium a year (embedded in components). DLA could collaborate on a program with the Army which to recovery and transfer this germanium to the Stockpile. Material transferred to the Stockpile inventory during the first year or two of the program would go into long-term storage to offset the 640 kg Stockpile requirement for germanium metal identified in the 2015 Report on Stockpile Requirements. The new proposed authority would allow the program to continue transferring germanium to DLA beyond the Stockpile requirement level by allowing material to be disposed through the Stockpile. This would create a stable secondary supply of germanium metal for industry as well as fund the reclamation costs and add revenue to the Stockpile Transaction Fund. A value for 500 kg of reclaimed germanium is approximately $550,000 at $1100 per kg.

A second example is that the Air Force currently has excess titanium alloy components that are not required for the Stockpile but could be reclaimed, accepted into the Stockpile, and then sold. This would generate approximately $50,000 per year in additional revenue.

The cost to execute transfers is generally only shipping and handling. These minor costs would be approximately $6,000 per year for germanium and $8,000 for titanium and would come from an already programmed material handling budget.

Example Transfer for Disposal Income ($Millions)							
Material	**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
Revenue from Reclaimed Germanium Under Proposed Changes to Section 4	$0.55	$0.55	$0.55	$0.55	$0.55	**$2.75**	National Defense Stockpile Transaction Fund
Shipping and Handling Costs for Germanium	($0.01)	($0.01)	($0.01)	($0.01)	($0.01)	**($0.03)**	National Defense Stockpile Transaction Fund
Revenue from Reclaimed Aerospace Titanium Under Proposed Changes to Section 4	$0.05	$0.05	$0.05	$0.05	$0.05	**$0.25**	National Defense Stockpile Transaction Fund
Shipping and Handling Costs for Titanium	($0.01)	($0.01)	($0.01)	($0.01)	($0.01)	**($0.04)**	National Defense Stockpile Transaction Fund
Impact to Program from Proposed Changes to Section 4	**$0.59**	**$0.59**	**$0.59**	**$0.59**	**$0.59**	**$2.93**	National Defense Stockpile Transaction Fund

For the proposed changes to Section 15, a mandatory business case analysis would determine if a particular qualification program is cost efficient. This business case would compare costs of traditional stockpiling versus the cost of qualifying a domestic source as described in the proposed language for Section 15(c)(3). Stockpiling requires significant resources for material acquisition costs, as well as ancillary costs for storage and material handling. The business case would compare the cost of stockpiling the foreign material, versus the cost of qualifying a domestic source of alternate material. Qualification programs could only be executed if a cost avoidance and cost benefit was identified.

DLA has been working with DOD and industry to identify potential qualification programs. Aerospace Grade Rayon is a synthetic fiber used in applications such as solid rocket motor nozzles and heat shields. The US relies on foreign sources for Aerospace Grade Rayon.

An alternative to rayon fiber is produced domestically and could be used in place of Aerospace Grade Rayon. Before the domestic fiber can be used, it must be qualified to meet DoD specifications and requirements. It is estimated that it would cost $1.33 million to qualify the fiber for defense applications. It would cost approximately $8.5 million to purchase a one-year

quantity (all platforms) of Aerospace Grade Rayon and add to the Stockpile inventory. Qualification would therefore represent a cost avoidance of $7.19 million.

Example Qualification of Domestic Sources of Supply ($Millions)							
Material	**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
ALT 1: Qualification of Domestic Material Under Proposed Changes to Section 15	0.00	($0.66)	($0.67)	0.00	0.00	**($1.33)**	National Defense Stockpile Transaction Fund
ALT 2: Stockpiling of Foreign Fiber	0.00	($2.13)	($2.13)	($2.13)	($2.13)	**($8.52)**	National Defense Stockpile Transaction Fund
Net Impact to Program from Proposed Changes to Section 15	**0.00**	**$1.47**	**$1.46**	**$2.13**	**$2.13**	**$7.19**	National Defense Stockpile Transaction Fund

Changes to Existing Law: The proposal would make the following changes in provisons of existing law:

THE STRATEGIC AND CRITICAL MATERIALS STOCK PILING ACT
(50 U.S.C. 98 et seq).
(As amended)

SHORT TITLE

SECTION 1. [50 U.S.C. 98] This Act may be cited as the "Strategic and Critical Materials Stock Piling Act".

FINDINGS AND PURPOSE

SEC. 2. [50 U.S.C. 98a] (a) The Congress finds that the natural resources of the United States in certain strategic and critical materials are deficient or insufficiently developed to supply the military, industrial, and essential civilian needs of the United States for national defense.

(b) It is the purpose of this Act to provide for the acquisition and retention of stocks of certain strategic and critical materials and to encourage the conservation and development of sources of such materials within the United States and thereby to decrease and to preclude, when possible, a dangerous and costly dependence by the United States upon foreign sources or a single point of failure for supplies of such materials in times of national emergency.

(c) The purpose of the National Defense Stockpile is to serve the interest of national defense only. The National Defense Stockpile is not to be used for economic or budgetary purposes.

MATERIALS TO BE ACQUIRED: PRESIDENTIAL AUTHORITY AND GUIDELINES

SEC. 3. [50 U.S.C. 98b] (a) Subject to subsection (c) of this section, the President shall determine from time to time (1) which materials are strategic and critical materials for the purposes of this Act, and (2) the quality and quantity of each such material to be acquired for the purposes of this Act and the form in which each such material shall be acquired and stored. Such materials when acquired, together with the other materials described in section 4 of this Act, shall constitute and be collectively known as the National Defense Stockpile (hereinafter in this Act referred to as the "stockpile").

(b) The President shall make the determinations required to be made under subsection (a) on the basis of the principles stated in section 2(c).

(c)(1) The quantity of any material to be stockpiled under this Act, as in effect on September 30, 1987, may be changed only as provided in this subsection or as otherwise provided by law enacted after December 4, 1987.

(2) The President shall notify Congress in writing of any change proposed to be made in the quantity of any material to be stockpiled. The President may make the change after the end of the 45-day period beginning on the date of the notification. The President shall include a full explanation and justification for the proposed change with the notification.

MATERIALS CONSTITUTING THE NATIONAL DEFENSE STOCKPILE

SEC. 4. [50 U.S.C. 98c] (a) The stockpile consists of the following materials:

(1) Materials acquired under this Act and contained in the national stockpile on July 29, 1979.

(2) Materials acquired under this Act after July 29, 1979.

(3) Materials in the supplemental stockpile established by section 1704(b) of the Agricultural Trade Development and Assistance Act of 1954 (as in effect from September 21, 1959, through December 31, 1966) on July 29, 1979.

(4) Materials acquired by the United States under the provisions of section 303 of the Defense Production Act of 1950 (50 U.S.C. App. 2093) and transferred to the stockpile by the President pursuant to subsection (f) of such section.

(5) Materials transferred to the United States under section 663 of the Foreign Assistance Act of 1961 (22 U.S.C. 2423) that have been determined to be strategic and critical materials for the purposes of this Act and that are allocated by the President under subsection (b) of such section for stockpiling in the stockpile.

(6) Materials acquired by the Commodity Credit Corporation and transferred to the stockpile under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h)).

(7) Materials acquired by the Commodity Credit Corporation under paragraph (2) of section 103(a) of the Act entitled "An Act to provide for greater stability in agriculture; to augment the marketing and disposal of agricultural products; and for other purposes," approved August 28, 1954 (7 U.S.C. 1743(a)), and transferred to the stockpile under the third sentence of such section.

(8) Materials transferred to the stockpile by the President under paragraph (4) of section 103(a) of such Act of August 28, 1954.

(9) Materials transferred to the stockpile under subsection (b).

(10) Materials transferred to the stockpile under subsection (c).

(b) Notwithstanding any other provision of law, any strategic and critical material that (1) is under the control of any department or agency of the United States, (2) is determined by the head of such department or agency to be excess to its needs and responsibilities, and (3) is ~~required for~~ suitable for transfer or disposal through the stockpile may be transferred to the stockpile. Any such **t**ransfer shall be made without reimbursement to such department or agency, but all costs required to effect such transfer shall be paid or reimbursed from funds appropriated to carry out this Act.

(c)~~(1) The Secretary of Energy, in consultation with the Secretary of Defense, shall transfer to the stockpile for disposal in accordance with this Act uncontaminated materials that are in the Department of Energy inventory of materials for the production of defense-related items, are excess to the requirements of the Department for that purpose, and are suitable for transfer to the stockpile and disposal through the stockpile.~~

~~(2)~~ The Secretary of Defense shall determine whether strategic and critical materials are suitable for transfer to the stockpile under ~~this subsection~~ subsection (b), are suitable for disposal through the stockpile, and are uncontaminated.

AUTHORITY FOR STOCKPILE OPERATIONS

SEC. 5. [50 U.S.C. 98d] (a)(1) Except for acquisitions made under the authority of paragraph (3) or (4) of section 6(a), no funds may be obligated or appropriated for acquisition of any material under this Act unless funds for such acquisition have been authorized by law. Funds appropriated for such acquisition (and for transportation and other incidental expenses related to such acquisition) shall remain available until expended, unless otherwise provided in appropriation Acts.

(2) If for any fiscal year the President proposes certain stockpile transactions in the annual materials plan submitted to Congress for that year under section 11(b) and after that plan is submitted the President proposes (or Congress requires) a significant change in any such transaction, or a significant transaction not included in such plan, no amount may be obligated or expended for such transaction during such year until the President has submitted a full statement of the proposed transaction to the appropriate committees of Congress and a period of 45 days has passed from the date of the receipt of such statement by such committees.

(b) Except for disposals made under the authority of paragraph (3), (4) or (5) of section 6(a) or under section 7(a), no disposal may be made from the stockpile unless such disposal, including the quantity of the material to be disposed of, has been specifically authorized by law.

(c) There is authorized to be appropriated such sums as may be necessary to provide for the transportation, processing, refining, storage, security, maintenance, rotation, and disposal of materials contained in or acquired for the stockpile. Funds appropriated for such purposes shall remain available to carry out the purposes for which appropriated for a period of two fiscal years, if so provided in appropriation Acts.

STOCKPILE MANAGEMENT

SEC. 6. [50 U.S.C. 98e] (a) The President shall —

(1) acquire the materials determined under section 3(a) to be strategic and critical materials;

(2) provide for the proper storage, security, and maintenance of materials in the stockpile;

(3) provide for the upgrading, refining or processing of any material in the stockpile (notwithstanding any intermediate stockpile quantity established for such material) when necessary to convert such material into a form more suitable for storage, subsequent disposition, and immediate use in a national emergency;

(4) provide for the rotation of any material in the stockpile when necessary to prevent deterioration or technological obsolescence of such material by replacement of such material with an equivalent quantity of substantially the same material or better material;

(5) provide for the appropriate recovery of any strategic and critical materials under section 3(a) that may be avaialble from excess materials made avaialble for recovery purposes by other Federal agencies;

(6) subject to the notification required by subsection (d)(2), provide for the timely disposal of materials in the stockpile that (A) are excess to stockpile requirements, and (B) may cause a loss to the Government if allowed to deteriorate; and

(7) subject to the provisions of section 5(b), dispose of materials in the stockpile the disposal of which is specifically authorized by law.

(b) Except as provided in subsections (c) and (d), acquisition of strategic and critical materials under this Act shall be made in accordance with established Federal procurement practices, and, except as provided in subsections (c) and (d) and in section 7(a), disposal of strategic and critical materials from the stockpile shall be made in accordance with the next sentence. To the maximum extent feasible—

(1) competitive procedures shall be used in the acquisition and disposal of such materials; and

(2) efforts shall be made in the acquisition and disposal of such materials to avoid undue disruption of the usual markets of producers, processors, and consumers of such materials and to protect the United States against avoidable loss.

(c)(1) The President shall encourage the use of barter in the acquisition under subsection (a)(1) of strategic and critical materials for, and the disposal under subsection (a)(5) or (a)(6) of materials from, the stockpile when acquisition or disposal by barter is authorized by law and is practical and in the best interest of the United States.

(2) Materials in the stockpile (the disposition of which is authorized by paragraph (3) to finance the upgrading, refining, or processing of a material in the stockpile, or is otherwise authorized by law) shall be available for transfer at fair market value as payment for expenses (including transportation and other incidental expenses) of acquisition of materials, or of upgrading, refining, processing, or rotating materials, under this Act.

(3) Notwithstanding section 3(c) or any other provision of law, whenever the President provides under subsection (a)(3) for the upgrading, refining, or processing of a material in the stockpile to convert that material into a form more suitable for storage, subsequent disposition, and immediate use in a national emergency, the President may barter a portion of the same material (or any other material in the stockpile that is authorized for disposal) to finance that upgrading, refining, or processing.

(4) To the extent otherwise authorized by law, property owned by the United States may be bartered for materials needed for the stockpile.

(d)(1) The President may waive the applicability of any provision of the first sentence of subsection (b) to any acquisition of material for, or disposal of material from, the stockpile. Whenever the President waives any such provision with respect to any such acquisition or disposal, or whenever the President determines that the application of paragraph (1) or (2) of such subsection to a particular acquisition or disposal is not feasible, the President shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives in writing of the proposed acquisition or disposal at least 45 days before any obligation of the United States is incurred in connection with such acquisition or disposal and shall include in such notification the reasons for not complying with any provision of such subsection.

(2) Materials in the stockpile may be disposed of under subsection (a)(5) only if such congressional committees are notified in writing of the proposed disposal at least 45 days before any obligation of the United States is incurred in connection with such disposal.

(3) The President may acquire leasehold interests in property, for periods not in excess of twenty years, for storage, security, and maintenance of materials in the stockpile.

SPECIAL DISPOSAL AUTHORITY OF THE PRESIDENT

SEC. 7. [50 U.S.C. 98f] (a) Materials in the stockpile may be released for use, sale, or other disposition —

(1) on the order of the President, at any time the President determines the release of such materials is required for purposes of the national defense;

(2) in time of war declared by the Congress or during a national emergency, on the order of any officer or employee of the United States designated by the President to have authority to issue disposal orders under this subsection, if such officer or employee determines that the release of such materials is required for purposes of the national defense; and

(3) on the order of the Under Secretary of Defense for Acquisition, Technology, and Logistics if the President has designated the Under Secretary to have authority to issue release orders under this subsection and, in the case of any such order, if the Under Secretary determines that the release of such materials is required for use, manufacture, or production for purposes of national defense.

(b) Any order issued under subsection (a) shall be promptly reported by the President, or by the officer or employee issuing such order, in writing, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

MATERIALS DEVELOPMENT AND RESEARCH

SEC. 8. [50 U.S.C. 98g] (a)(1) The President shall make scientific, technologic, and economic investigations concerning the development, mining, preparation, treatment, and utilization of ores and other mineral substances that (A) are found in the United States, or in its territories or possessions, (B) are essential to the national defense, industrial, and essential civilian needs of the United States, and (C) are found in known domestic sources in inadequate quantities or grades.

(2) Such investigations shall be carried out in order to —

(A) determine and develop new domestic sources of supply of such ores and mineral

substances;

(B) devise new methods for the treatment and utilization of lower grade reserves of such ores and mineral substances; and

(C) develop substitutes for such essential ores and mineral products.

(3) Investigations under paragraph (1) may be carried out on public lands and, with the consent of the owner, on privately owned lands for the purpose of exploring and determining the extent and quality of deposits of such minerals, the most suitable methods of mining and beneficiating such minerals, and the cost at which the minerals or metals may be produced.

(b) The President shall make scientific, technologic, and economic investigations of the feasibility of developing domestic sources of supplies of any agricultural material or for using agricultural commodities for the manufacture of any material determined pursuant to section 3(a) of this Act to be a strategic and critical material or substitutes therefore.

(c) The President shall make scientific, technologic, and economic investigations concerning the feasibility of —

(1) developing domestic sources of supply of materials (other than materials referred to in subsections (a) and (b)) determined pursuant to section 3(a) to be strategic and critical materials; and

(2) developing or using alternative methods for the refining or processing of a material in the stockpile so as to convert such material into a form more suitable for use during an emergency or for storage.

(d) The President shall encourage the conservation of domestic sources of any material determined pursuant to section 3(a) to be a strategic and critical material by making grants or awarding contracts for research regarding the development of:

(1) substitutes for such material; or

(2) more efficient methods of production or use of such material.

NATIONAL DEFENSE STOCKPILE TRANSACTION FUND

SEC. 9. [50 U.S.C. 98h] (a) There is established in the Treasury of the United States a separate fund to be known as the National Defense Stockpile Transaction Fund (hereinafter in this section referred to as the "fund").

(b)(1) All moneys received from the sale of materials in the stockpile under paragraphs (5) and (6) of section 6(a) shall be covered into the fund.

(2) Subject to section 5(a)(1), moneys covered into the fund under paragraph (1) are hereby made available (subject to such limitations as may be provided in appropriations Acts) for the following purposes:

(A) The acquisition, maintenance, and disposal of strategic and critical materials under section 6(a).

(B) Transportation, storage, and other incidental expenses related to such acquisition, maintenance, and disposal.

(C) Development of current specifications of stockpile materials and the upgrading of existing stockpile materials to meet current specifications (including transportation, when economical, related to such upgrading).

(D) Encouraging the appropriate conservation of strategic and critical materials.

(E) Testing and quality studies of stockpile materials.

(F) Studying future material and mobilization requirements for the stockpile.

(G) Activities authorized under section 15.

(H) Contracting under competitive procedures for materials development and research to—

(i) improve the quality and availability of materials stockpiled from time to time in the stockpile; and

(ii) develop new materials for the stockpile.

(I) Improvement or rehabilitation of facilities, structures, and infrastructure needed to maintain the integrity of stockpile materials.

(J) Disposal of hazardous materials that are stored in the stockpile and authorized for disposal by law.

(K) Performance of environmental remediation, restoration, waste management, or compliance activities at locations of the stockpile that are required under a Federal law or are undertaken by the government under an administrative decision or negotiated agreement.

(L) Pay of employees of the National Defense Stockpile Program.

(M) Other expenses of the National Defense Stockpile program.

(3) Moneys in the fund shall remain avialable until expended.

(c) All moneys received from the sale of materials being rotated under the provisions of section 6(a)(4) or disposed of under section 7(a) shall be covered into the fund and shall be available only for the acquisition of replacement materials.

(d) If, during a fiscal year, the National Defense Stockpile Manager barters materials in the stockpile for the purpose of acquiring, upgrading, refining, or processing other materials (or for services directly related to that purpose), the contract value of the materials so bartered shall —

(1) be applied toward the total value of materials that are authorized to be disposed of from the stockpile during that fiscal year;

(2) be treated as an acquisition for purposes of satisfying any requirement imposed on the National Defense Stockpile Manager to enter into obligations during that fiscal year under subsection (b)(2) of this section; and

(3) not increase or decrease the balance in the fund.

ADVISORY COMMITTEES

SEC. 10. [50 U.S.C. 98h-1] (a) The President may appoint advisory committees composed of individuals with expertise relating to materials in the stockpile or with expertise in stockpile management to advise the President with respect to the acquisition, transportation, processing, refining, storage, security, maintenance, rotation, and disposal of such materials under this Act.

(b) Each member of an advisory committee established under subsection (a) of this section while serving on the business of the advisory committee away from such member's home or regular place of business shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons intermittently employed in the Government service.

(c)(1) The President shall appoint a Market Impact Committee composed of representatives from the Department of Agriculture, the Department of Commerce, the Department of Defense, the Department of Energy, the Department of the Interior, the Department of State, the Department of the Treasury, and the Federal Emergency Management Agency, and such other persons as the President considers appropriate. The representatives from the Department of Commerce and the Department of State shall be Cochairmen of the Committee.

(2) The Committee shall advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile that are proposed to be included in the annual materials plan submitted to Congress under section 11(b), or in any revision of such plan, and shall submit to the manager the Committee's recommendations regarding those acquisitions and disposals.

(3) The annual materials plan or the revision of such plan, as the case may be, shall contain—

(A) the views of the Committee on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile;

(B) the recommendations submitted by the Committee under paragraph (2); and

(C) for each acquisition or disposal provided for in the plan or revision that is inconsistent with a recommendation of the Committee, a justification for the acquisition or disposal.

(4) In developing recommendations for the National Defense Stockpile Manager under paragraph (2), the Committee shall consult from time to time with representatives of producers, processors, and consumers of the types of materials stored in the stockpile.

REPORTS TO CONGRESS

SEC. 11. [50 U.S.C. 98h-2] (a) Not later than January 15 of each year, the President shall submit to the Congress an annual written report detailing operations under this Act. Each such report shall include—

(1) information with respect to foreign and domestic purchases of materials during the preceding fiscal year;

(2) information with respect to the acquisition and disposal of materials under this Act by barter, as provided for in section 6(c) of this Act, during such fiscal year;

(3) information with respect to the activities by the Stockpile Manager to encourage the conservation, substitution, and development of strategic and critical materials within the United States;

(4) information with respect to the research and development activities conducted under sections 2 and 8;

(5) a statement and explanation of the financial status of the National Defense Stockpile Transaction Fund and the anticipated appropriations to be made to the fund, and obligations to be made from the fund, during the current fiscal year; and

(6) such other pertinent information on the administration of this Act as will enable the Congress to evaluate the effectiveness of the program provided for under this Act and to determine the need for additional legislation.

(b)(1) Not later than February 15 of each year, the President shall submit to the appropriate committees of the Congress a report containing an annual materials plan for the operation of the

stockpile during the next fiscal year and the succeeding four fiscal years.

(2) Each such report shall include details of all planned expenditures from the National Defense Stockpile Transaction Fund during such period (including expenditures to be made from appropriations from the general fund of the Treasury) and of anticipated receipts from proposed disposals of stockpile materials during such period. Each such report shall also contain details regarding the materials development and research projects to be conducted under section 9(b)(2)(G) during the fiscal years covered by the report. With respect to each development and research project, the report shall specify the amount planned to be expended from the fund, the material intended to be developed, the potential military or defense industrial applications for that material, and the development and research methodologies to be used.

(3) Any proposed expenditure or disposal detailed in the annual materials plan for any such fiscal year, and any expenditure or disposal proposed in connection with any transaction submitted for such fiscal year to the appropriate committees of Congress pursuant to section 5(a)(2), that is not obligated or executed in that fiscal year may not be obligated or executed until such proposed expenditure or disposal is resubmitted in a subsequent annual materials plan or is resubmitted to the appropriate committees of Congress in accordance with section 5(a)(2), as appropriate.

DEFINITIONS

SEC. 12. [50 U.S.C. 98h-3] For the purposes of this Act:

(1) The term “strategic and critical materials” means materials that (A) would be needed to supply the military, industrial, and essential civilian needs of the United States during a national emergency, and (B) are not found or produced in the United States in sufficient quantities to meet such need.

(2) the term “national emergency” means a general declaration of emergency with respect to the national defense made by the President or by the Congress.

IMPORTATION OF STRATEGIC AND CRITICAL MATERIALS

Sec. 13. [50 U.S.C. 98h-4] The President may not prohibit or regulate the importation into the United States of any material determined to be strategic and critical pursuant to the provisions of this subchapter, if such material is the product of any foreign country or area not listed in general note 3(b) of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), for so long as the importation into the United States of material of that kind which is the product of a country or area listed in such general note is not prohibited by any provision of law.

BIENNIAL REPORT ON STOCKPILE REQUIREMENTS

SEC. 14. [50 U.S.C. 98h-5] (a) Not later than January 15 of every other year, the Secretary of Defense shall submit to Congress a report on stockpile requirements. Each such report shall include--

(1) the Secretary's recommendations with respect to stockpile requirements; and
(2) the matters required under subsection (b).

(b) Each report under this section shall set forth the national emergency planning assumptions used by the Secretary in making the Secretary's recommendations under subsection

(a)(1) with respect to stockpile requirements. The Secretary shall base the national emergency planning assumptions on a military conflict scenario consistent with the scenario used by the Secretary in budgeting and defense planning purposes. The assumptions to be set forth include assumptions relating to each of the following:

(1) The length and intensity of the assumed military conflict.

(2) The military force structure to be mobilized.

(3) The losses anticipated from enemy action.

(4) The military, industrial, and essential civilian requirements to support the national emergency.

(5) The availability of supplies of strategic and critical materials from foreign sources during the mobilization period, the military conflict, and the subsequent period of replenishment, taking into consideration possible shipping losses.

(6) The domestic production of strategic and critical materials during the mobilization period, the military conflict, and the subsequent period of replenishment, taking into consideration possible shipping losses.

(7) Civilian austerity measures required during the mobilization period and military conflict.

(c) The stockpile requirements shall be based on those strategic and critical materials necessary for the United States to replenish or replace, within three years of the end of the military conflict scenario required under subsection (b), all munitions, combat support items, and weapons systems that would be required after such a military conflict.

(d) The Secretary shall also include in each report under this section an examination of the effect that alternative mobilization periods under the military conflict scenario required under subsection (b) of this section, as well as a range of other military conflict scenarios addressing potentially more serious threats to national security, would have on the Secretary's recommendations under subsection (a)(1) with respect to stockpile requirements.

(e) The President shall submit with each report under this section a statement of the plans of the President for meeting the recommendations of the Secretary set forth in the report.

DEVELOPMENT OF DOMESTIC SOURCES

SEC. 15. [50 U.S.C. 98h-6] Subject to subsection (c) and to the extent the President determines such action is required for the national defense, the President shall encourage the development and appropriate conservation of domestic sources for materials determined pursuant to section 3(a) to be strategic and critical materials—

(1) by purchasing, or making a commitment to purchase, strategic and critical materials of domestic origin when such materials are needed for the stockpile; ~~and~~

(2) by contracting with domestic facilities, or making a commitment to contract with domestic facilities, for the processing or refining of strategic and critical materials in the stockpile when processing or refining is necessary to convert such materials into a form more suitable for storage and subsequent disposition~~.~~; and

(3) by qualifying existing domestic facilities and domestically produced strategic and critical materials to meet the requirments of defense and essential civilian industries in times of national emergencies when existing domestic sources of supply are either insufficient or

vulnerable to single points of failure.

(b) A contract or commitment made under paragraph (1) or (2) of subsection (a) may not exceed five years from the date of the contract or commitment. Such purchases and commitments to purchase may be made for such quantities and on such terms and conditions, including advance payments, as the President considers to be necessary.

(c)(1) Descriptions of proposed transactions under paragraph (1) or (2) of subsection (a) shall be included in the appropriate annual materials plan submitted to Congress under section 11(b). Changes to any such transaction, or the addition of a transaction not included in such plan, shall be made in the manner provided by section 5(a)(2).

(2) The authority of the President to enter into obligations under this section is effective for any fiscal year only to the extent that funds in the National Defense Stockpile Transaction Fund are adequate to meet such obligations. Payments required to be as a result of obligations incurred under this section shall be made from amounts in the fund.

(3) The President may enter into obligations to qualify domestic facilities and domestically produced strategic and critical materials when it would be cost effective relative to stockpiling material. Such obligations may be entered into on a reimbursable basis and the proceeds covered into the National Defense Stockpile Transaction Fund under section 9.

(d) The authority of the President under subsection (a) includes the authority to pay—

(1) the expenses of transporting materials; and

(2) other incidental expenses related to carrying out such subsection.

(e) The President shall include in the reports required under section 11ae information with respect to activities conducted under this section.

NATIONAL DEFENSE STOCKPILE MANAGER

SEC. 16. [50 U.S.C. 98h-7] (a) The President shall designate a single Federal office to have responsibility for performing the functions of the President under this Act, other than under sections 7(a)(1) and 13. The office designated shall be one to which appointment is made by the President, by and with the advice and consent of the Senate.

(b) The individual holding the office designated by the President under subsection (a) shall be known for purposes of functions under this Act as the "National Defense Stockpile Manager."

(c) The President may delegate functions of the President under this Act (other than under sections 7(a)(1) and 13) only to the National Defense Stockpile Manager. Any such delegation made by the President shall remain in effect until specifically revoked by law or Executive order. The President may not delegate functions of the President under sections 7(a)(1) and 13.

United States Code Citations

Section 2—50 U.S.C. 98a

Section 10—50 U.S.C. 98h-1

Section 3—50 U.S.C. 98b
Section 4—50 U.S.C. 98c
Section 5—50 U.S.C. 98d
Section 6—50 U.S.C. 98e
Section 7—50 U.S.C. 98f
Section 8—50 U.S.C. 98g
Section 9—50 U.S.C. 98h
Section 11—50 U.S.C. 98h-2
Section 12—50 U.S.C. 98h-3
Section 13—50 U.S.C. 98h-4
Section 14—50 U.S.C. 98h-5
Section 15—50 U.S.C. 98h-6
Section 16—50 U.S.C. 98h-7

TITLE XV—AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR OVERSEAS CONTINGENCY OPERATIONS

TITLE XVI—SERVICEMEMBERS CIVIL RELIEF ACT

Section 1601, this title would make a series of improvements to the Servicemembers Civil Relief Act (SCRA).

Section 1602 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.

Section 1603 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.

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the SCRA, or a statement that the member was contacted and requests for the case to proceed following the normal rules of the court.

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Section 1604 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).

Section 1605 would double the dollar amount of civil penalties currently authorized.

Section 1606 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.

Section 1607 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.

Section 1608 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.

Section 1609 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.

Section 1610 would provide for a nondiscrimination provision that is modeled after a similar provision in S. 3322 in the 112th Congress.

Section 1611 would provide harmonization of the tail coverage periods for installment sales contracts in section 302 to match mortgages in section 303.

Section 1612 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.

Section 1613 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.

Section 1614 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).

Section 1615 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.

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 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.

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

Section 1701 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.

Section 1702, 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.

Section 1703 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.

Section 1704, 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.

Section 1705 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.

Section 1706 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.

Section 1707, 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.

Section 1708, 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.

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.

Section 1710 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 XXVII—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,	291.6	159.3	186.5	180.43	228.1

		Army National Guard					
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	State/country	ACF	State/country	ACF
Alabama	0.84	New Hampshire	1.04	Azerbaijan	1.27
Alaska	2.12	New Jersey	1.21	Azores	1.70
Arizona	0.97	New Mexico	0.91	Bahamas	1.43
Arkansas	0.84	New York	1.13	Bahrain	1.42
California	1.24	North Carolina	0.83	Belgium	1.52
Colorado	1.03	North Dakota	1.07	Bosnia	1.12
Connecticut	1.15	Ohio	0.94	Bulgaria	0.94
Delaware	1.06	Oklahoma	0.95	Cambodia	1.18
Florida	0.86	Oregon	1.13	China	1.21
Georgia	0.82	Pennsylvania	1.14	Columbia	1.16
Hawaii	2.32	Rhode Island	1.17	Crete	1.30
Idaho	1.03	South Carolina	0.89	Croatia	1.03
Illinois	1.04	South Dakota	0.93	Diego Garcia	2.67
Indiana	0.99	Tennessee	0.85	Egypt	1.24
Iowa	1.00	Texas	0.84	Estonia	1.33
Kansas	0.92	Utah	1.04	France	1.26
Kentucky	0.90	Vermont	1.02	Georgia Republic	1.06
Louisiana	0.87	Virginia	0.90	Germany	1.17
Maine	1.03	Washington	1.07	Greece	1.23
Maryland	0.97	West Virginia	0.97	Guam	2.31
Massachusetts	1.17	Wisconsin	1.09	Horn of Africa	1.80
Michigan	1.06	Wyoming	0.99	Hungary	1.10
Minnesota	1.15	Washington DC	1.03	India	1.08
Mississippi	0.83	Afghanistan	1.66	Indonesia	0.98
Missouri	1.00	Albania	1.07	Iraq	1.61
Montana	1.06	Algeria	1.27	Ireland	1.23
Nebraska	1.00	American Samoa	2.03	Israel	1.26
Nevada	1.18	Australia	1.49	Italy	1.44

State/country	ACF
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
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

index for military construction projects published by the Department of Defense during the prior fiscal year for the location of the project.

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 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) ***

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SEC. 3031. BARRY M. GOLDWATER RANGE, ARIZONA.

(a) ***

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(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 2806, 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.

(hg) 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.

Section 2807 would provide continued authority for the Secretary of Defense to use funds appropriated for operation and maintenance for military construction to meet temporary operational requirements during a time of declared war, national emergency, or contingency operation through the end of fiscal year 2017.

Extension of this authority would enable the Department of Defense to provide basic facilities and infrastructure critical to military operations months and years ahead of the regular annual authorization and appropriation process for construction projects. It also would provide continuous, needed support to commanders and forces during ongoing and future contingency operations.

This proposal would retain the current requirement to provide notice to Congress prior to the use of funds appropriated from for operation and maintenance under the conditions set forth in subsection (a) of section 2808 of the Military Construction Authorization Act for Fiscal Year 2004. In addition, the Department of Defense still would not be able to proceed with execution of these projects until after a waiting period following the delivery of the notification to the Congress. (The waiting period is 10 days, unless notification is by electronic means, in which case it is 7 days.)

This proposal would continue to authorize the Secretary to use the authority in Afghanistan even at installations deemed as supporting a long-term presence in Afghanistan, as Contingency Construction Authority is not otherwise authorized to be used at installations where the United States is reasonably expected to have a long-term presence. However, from an operational standpoint, whether the United States intends to have a long-term presence at key locations does not preclude the emergence of critical, urgent operational capability requirements at these locations; thus, the Department needs the proposed waiver authority.

Budget Implications: This proposal would authorize the Secretary of Defense to use operation and maintenance funds already authorized and appropriated to meet temporary operational requirements when all necessary pre-requisites are met. It requires no additional appropriation of funds and results in no savings. It is merely an extension of a current, expiring authority.

RESOURCE REQUIREMENTS ($MILLION)							
	FY 2017	**FY 2018**	**FY 2019**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
O&M-AF	0	0	0				
Total	0	0	0				

Changes to Existing Law: This proposal would make the following changes to section 2808 of the National Defense Authorization Act for Fiscal Year 2004 (division B of Public Law 108-136; 117 Stat. 1723):

Section 2808 would provide continued authority for the Secretary of Defense to use funds appropriated for operation and maintenance for military construction to meet temporary operational requirements during a time of declared war, national emergency, or contingency operation through the end of fiscal year 2017.

Extension of this authority would enable the Department of Defense to provide basic facilities and infrastructure critical to military operations months and years ahead of the regular annual authorization and appropriation process for construction projects. It also would provide continuous, needed support to commanders and forces during ongoing and future contingency operations.

This proposal would retain the current requirement to provide notice to Congress prior to the use of funds appropriated from for operation and maintenance under the conditions set forth in subsection (a) of section 2808 of the Military Construction Authorization Act for Fiscal Year 2004. In addition, the Department of Defense still would not be able to proceed with execution of these projects until after a waiting period following the delivery of the notification to the Congress. (The waiting period is 10 days, unless notification is by electronic means, in which case it is 7 days.)

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Budget Implications: This proposal would authorize the Secretary of Defense to use operation and maintenance funds already authorized and appropriated to meet temporary operational requirements when all necessary pre-requisites are met. It requires no additional appropriation of funds and results in no savings. It is merely an extension of a current, expiring authority.

RESOURCE REQUIREMENTS ($MILLION)							
	FY 2017	**FY 2018**	**FY 2019**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
O&M-AF	0	0	0				
Total	0	0	0				

Changes to Existing Law: This proposal would make the following changes to section 2808 of the National Defense Authorization Act for Fiscal Year 2004 (division B of Public Law 108-136; 117 Stat. 1723):

SEC. 2808. TEMPORARY, LIMITED AUTHORITY TO USE OPERATION AND MAINTENANCE FUNDS FOR CONSTRUCTION PROJECTS IN CERTAIN AREAS OUTSIDE THE UNITED STATES.

(a) TEMPORARY AUTHORITY.—The Secretary of Defense may obligate appropriated funds available for operation and maintenance to carry out a construction project inside the area of responsibility of the United States Central Command or the area of responsibility of Combined

Joint Task Force-Horn of Africa that the Secretary determines meets each of the following conditions:

(1) The construction is necessary to meet urgent military operational requirements of a temporary nature involving the use of the Armed Forces in support of a declaration of war, the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621), or a contingency operation.

(2) The construction is not carried out at a military installation where the United States is reasonably expected to have a long-term presence, unless the military installation is located in Afghanistan, for which projects using this authority may be carried out at installations deemed as supporting a long-term presence.

(3) The United States has no intention of using the construction after the operational requirements have been satisfied.

(4) The level of construction is the minimum necessary to meet the temporary operational requirements.

(b) NOTIFICATION OF OBLIGATION OF FUNDS.—Before using appropriated funds available for operation and maintenance to carry out a construction project outside the United States that has an estimated cost in excess of the amounts authorized for unspecified minor military construction projects under section 2805(c) of title 10, United States Code, the Secretary of Defense shall submit to the congressional committees specified in subsection (f) a notice regarding the construction project. The project may be carried out only after the end of the 10-day period beginning on the date the notice is received by the committees or, if earlier, the end of the 7-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of title 10, United States Code. The notice shall include the following:

(1) Certification that the conditions specified in subsection (a) are satisfied with regard to the construction project.

(2) A description of the purpose for which appropriated funds available for operation and maintenance are being obligated.

(3) All relevant documentation detailing the construction project.

(4) An estimate of the total amount obligated for the construction.

(c) ANNUAL LIMITATION ON USE OF AUTHORITY.—

(1) The total cost of the construction projects carried out under the authority of this section using, in whole or in part, appropriated funds available for operation and maintenance shall not exceed $100,000,000 between ~~October 1, 2015~~October 1, 2016, and the earlier of ~~December 31, 2016~~December 31, 2017, or the date of the enactment of an Act authorizing funds for military activities of the Department of Defense for fiscal year ~~2017~~2018.

(2) Notwithstanding paragraph (1), the Secretary of Defense may authorize the obligation under this section of not more than an additional $10,000,000 of appropriated funds available for operation and maintenance for a fiscal year if the Secretary determines that the additional funds are needed for costs associated with contract closeouts.

[(d) Repealed.**]**

(e) RELATION TO OTHER AUTHORITIES.—The temporary authority provided by this section, and the limited authority provided by section 2805(c) of title 10, United States Code, to use appropriated funds available for operation and maintenance to carry out a construction project are the only authorities available to the Secretary of Defense and the Secretaries of the military departments to use appropriated funds available for operation and maintenance to carry out construction projects.

(f) CONGRESSIONAL COMMITTEES.—The congressional committees referred to in this section are the following:

(1) The Committee on Armed Services and the Subcommittee on Defense and the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies of the Committee on Appropriations of the Senate.

(2) The Committee on Armed Services and the Subcommittee on Defense and the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies of the Committee on Appropriations of the House of Representatives.

(g) EFFECT OF FAILURE TO SUBMIT PROJECT NOTIFICATIONS.—If the advance notice of the proposed obligation of funds for a construction project required by subsection (b) is not submitted to the congressional committees specified in subsection (f) by the required date, appropriated funds available for operation and maintenance may not be obligated or expended after that date under the authority of this section to carry out construction projects outside the United States until the date on which the notice is finally submitted.

(h) EXPIRATION OF AUTHORITY.—The authority to obligate funds under this section expires on the later of—

(1) December 31, ~~2016~~2017; or

(2) the date of the enactment of an Act authorizing funds for military construction for fiscal year ~~2017~~2018.

(i) CERTAIN COUNTRIES IN THE AREA OF RESPONSIBILITY OF UNITED STATES AFRICA COMMAND DEFINED.—In this section, the term "certain countries in the area of responsibility of the United States Africa Command" means Kenya, Somalia, Ethiopia, Djibouti, Seychelles, Burundi, and Uganda.

Section 2809 would authorize the Department of Defense to permit the lessee of Government-owned/contractor-operated industrial plants and facilities, with the approval of the Secretary concerned, to alter, expand, or otherwise improve such plants and facilities as necessary for the production of military weapons systems, munitions, components, or supplies, and for the Department to take ownership of such alteration, expansion, or other improvement upon completion without treating such alteration, expansion, or other improvement as all or part of the consideration for the lease. This change is necessary because acceptance by the Department of a lessee improvement, without treating such improvement as all or part of the lease consideration as authorized by 10 U.S.C. 2667(b)(5), constitutes a "military construction" project that, as specified in 10 U.S.C. 2802(a), must otherwise be authorized by law. Efficient management of industrial facility leases requires the Department to be able to permit and take

ownership of lessee improvements without necessarily treating such improvements as lease consideration and without seeking project-specific Congressional authorization.

This proposal would provide for congressional oversight of construction on military installations through the stated notification process.

Budget Implications: This proposal has no direct budgetary implications. Consequently, there are no entries in the Resource Requirements table below. This proposal would allow the lessee of a Government-owned/contractor-operated industrial plant to conduct Government-approved improvements to the facilities and then seek to recover the costs of a leasehold improvement otherwise allowable under the Government contracts being performed at the facility.

The lessee would recover the project's cost over a period of time as provided for in its approved accounting practices. The lessee would consider the adjustments when developing forward pricing and rates. These rates are, in turn, part of the consideration when the agency develops its input for the President's budget. This proposed method would supplement the existing direct funding method, untether the project from the budget planning and approval cycles, and increase program flexibility while continuing to provide needed oversight.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
AF Plant 4 Construction Project	--	--	--	--	--	Aircraft Procurement, Air Force	1	P-1	0207142F
Total	--	--	--	--	--	--	--	--	--

Changes to Existing Law: This proposal would make the following changes to section 2535 of title 10, United States Code:

TITLE 10, UNITED STATES CODE

§ 2535. Defense Industrial Reserve

(a) DECLARATION OF PURPOSE AND POLICY.—It is the intent of Congress—

(1) to provide a comprehensive and continuous program for the future safety and for the defense of the United States by providing adequate measures whereby an essential nucleus of Government-owned industrial plants and an industrial reserve of machine tools and other industrial manufacturing equipment may be assured for immediate use to supply the needs of the armed forces in time of national emergency or in anticipation thereof;

(2) that such Government-owned plants and such reserve shall not exceed in number or kind the minimum requirements for immediate use in time of national emergency, and that any such items which shall become excess to such requirements shall be disposed of as expeditiously as possible;

(3) that to the maximum extent practicable, reliance will be placed upon private industry for support of defense production; and

(4) that machine tools and other industrial manufacturing equipment may be held in plant equipment packages or in a general reserve to maintain a high state of readiness for production of critical items of defense materiel, to provide production capacity not available in private industry for defense materiel, or to assist private industry in time of national disaster.

(b) POWERS AND DUTIES OF THE SECRETARY OF DEFENSE.—(1) To execute the policy set forth in subsection (a), the Secretary of Defense shall—

(A) determine which industrial plants and installations (including machine tools and other industrial manufacturing equipment) should become a part of the Defense Industrial Reserve;

(B) designate what excess industrial property shall be disposed of;

(C) establish general policies and provide for the transportation, handling, care, storage, protection, maintenance, repair, rebuilding, utilization, recording, leasing and security of such property;

(D) direct the transfer without reimbursement of such property to other Government agencies with the consent of such agencies;

(E) direct the leasing of any of such property to designated lessees;

(F) authorize the disposition in accordance with existing law of any of such property when in the opinion of the Secretary such property is no longer needed by the Department of Defense; and

(G) notwithstanding chapter 5 of title 40 and any other provision of law, authorize the transfer to a nonprofit educational institution or training school, on a nonreimbursable basis, of any such property already in the possession of such institution or school whenever the program proposed by such institution or school for the use of such property is in the public interest.

(2)(A) The Secretary of a military department to which equipment or other property is transferred from the Defense Industrial Reserve shall reimburse appropriations available for the purposes of the Defense Industrial Reserve for the full cost (including direct and indirect costs) of—

(i) storage of such property;

(ii) repair and maintenance of such property; and

(iii) overhead allocated to such property.

(B) The Secretary of Defense shall prescribe regulations establishing general policies and fee schedules for the reimbursements under subparagraph (A).

(c) ACCEPTANCE OF LESSEE IMPROVEMENTS AT GOVERNMENT-OWNED/CONTRACTOR-OPERATED INDUSTRIAL PLANTS.—(1) A lease of a Government-owned/contractor-operated industrial plant or facility may permit the lessee, with the approval of the Secretary concerned, to alter, expand, or otherwise improve the plant or facility as necessary for the development or production of military weapons systems, munitions, components, or supplies. Such lease may provide, notwithstanding section 2802 of this title, that such alteration, expansion or other improvement shall, upon completion, become the property of the Government regardless of whether such alteration, expansion or other improvement constitutes all or part of the consideration for the lease pursuant to section 2667(b)(5) of this title or represents a reimbursable cost allocable to any contract, cooperative agreement, grant or other instrument with respect to activity undertaken at such industrial plant or facility.

(2) When a decision is made to approve a project to which paragraph (1) applies costing more than the threshold specified under section 2805(c) of this title, the Secretary concerned shall notify in writing the congressional defense committees 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)~~(d) DEFINITIONS.—In this section:

(1) The term "Defense Industrial Reserve" means—

(A) a general reserve of industrial manufacturing equipment, including machine tools, selected by the Secretary of Defense for retention for national defense or for other emergency use;

(B) those industrial plants and installations held by and under the control of the Department of Defense in active or inactive status, including Government-owned/Government-operated plants and installations and Government-owned/contractor-operated plants and installations which are retained for use in their entirety, or in part, for production of military weapons systems, munitions, components, or supplies; and

(C) those industrial plants and installations under the control of the Secretary which are not required for the immediate need of any department or agency of the Government and which should be sold, leased, or otherwise disposed of.

(2) The term "plant equipment package" means a complement of active and idle machine tools and other industrial manufacturing equipment held by and under the control of the Department of Defense and approved by the Secretary for retention to produce particular defense materiel or defense supporting items at a specific level of output in the event of emergency.

Section 2810, in support of encouraging and facilitating the sustained provision of cash contributions from the Government of Kuwait to the U.S. Department of Defense for the purpose of paying the costs of construction, maintenance, and repair projects mutually beneficial to the Department and Kuwaiti military forces, the Department of Defense is recommending amending section 2804 of the National Defense Authorization Act for Fiscal Year 2016 so that the temporary authority granted by that section becomes permanent.

The Department recommends this change so that it is able to accept cash contributions for mutually beneficial projects from Kuwait on a sustained basis and can conduct mid- to long-term planning for the receipt of these types of projects when opportunities arise. These contributions, in addition to any burden sharing contributions made by the Government of Kuwait, will contribute to the promotion of U.S. national interests and regional stability.

Failure to make the authority granted in Section 2804 of the National Defense Authorization Act for Fiscal Year 2016 permanent will discourage the Government of Kuwait from discussing, developing, and making provisions to provide cash contributions for construction, maintenance, and repair projects mutually beneficial to the Department of Defense and Kuwait military forces beyond September 30, 2020, .

Budget Implications: None for the Department of Defense. Funding for these projects will come from the Government of Kuwait.

Changes to Existing Law: This proposal would amend section 2804 of the National Defense Authorization Act for Fiscal Year 2016 by striking subsection (f), as reflected below:.

SEC. 2804. ~~TEMPORARY~~ AUTHORITY FOR ACCEPTANCE AND USE OF CONTRIBUTIONS FOR CERTAIN CONSTRUCTION, MAINTENANCE, AND REPAIR PROJECTS MUTUALLY BENEFICIAL TO THE DEPARTMENT OF DEFENSE AND KUWAIT MILITARY FORCES.

(a) AUTHORITY TO ACCEPT CONTRIBUTIONS.—The Secretary of Defense, after consultation with the Secretary of State, may accept cash contributions from the government of Kuwait for the purpose of paying for the costs of construction (including military construction not otherwise authorized by law), maintenance, and repair projects mutually beneficial to the Department of Defense and Kuwait military forces.

(b) ACCOUNTING.—Contributions accepted under subsection (a) shall be placed in an account established by the Secretary of Defense and shall remain available until expended as provided in such subsection.

(c) PROHIBITION ON USE OF CONTRIBUTIONS TO OFFSET BURDEN SHARING CONTRIBUTIONS.—Contributions accepted under subsection (a) may not be used to offset any burden sharing contributions made by the government of Kuwait.

(d) NOTICE.—When a decision is made to carry out a project using contributions accepted under subsection (a) and the estimated cost of the project will exceed the thresholds prescribed by section 2805 of title 10, United States Code, the Secretary of Defense shall submit to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives written notice of decision, the justification for the project, and the estimated cost of the project.

(e) MUTUALLY BENEFICIAL DEFINED.—A project described in subsection (a) shall be considered to be ''mutually beneficial'' if—

(1) the project is in support of a bilateral defense cooperation agreement between the United States and the government of Kuwait; or

(2) the Secretary of Defense determines that the United States may derive a benefit from the project, including—

(A) access to and use of facilities of the Kuwait military forces;

(B) ability or capacity for future force posture; and

(C) increased interoperability between the Department of Defense and Kuwait military forces.

~~(f) EXPIRATION OF PROJECT AUTHORITY.—The authority to carry out projects under this section expires on September 30, 2020. The expiration of the authority does not prevent the continuation of any project commenced before that date.~~

Section 2811 would provide for the release of the City of St. Marys, Georgia, from its obligations to the Federal Aviation Administration (FAA) associated with operation of an airport and for the Secretary of the Navy to pay for certain costs owed by the City of St. Marys to FAA associated with the release. This would then lead to the closure of the airport.

The City of St. Marys, Georgia, operates a general aviation airport, which is part of the FAA National Plan of Integrated Airport Systems. As an element of the National Plan of Integrated Airport Systems, St. Marys Airport plays a role in regional air traffic management in southeast Georgia. St. Marys Airport is located approximately 1.5 miles from Naval Submarine Base (NSB) Kings Bay Georgia which has Strategic Weapons Facility Atlantic (SWFLANT) as its major tenant. SWFLANT is a Strategic Systems Program component that supports the strategic deterrence mission of the U.S. Navy and the national security of the U.S. Privately-owned aircraft operating from St. Marys Airport cause significant security and safety risks to operations at Naval Submarine Base Kings Bay that cannot be adequately mitigated and can only be resolved with the closure of St. Marys Airport. In order to gain support from the FAA to close the St. Marys Airport, the FAA requires funds for a replacement airport or enhancement of a nearby public-use airport. It is not reasonable, and is simply not feasible, for the City of St. Marys to pay for the airport relocation. Due to precedential concerns, the FAA cannot waive the fair market value of the current airport, block grant amortized amount, or airport revenue contribution requirements associated with a replacement airport. The FAA is supportive of closing the airport through the legislative process. Closure of St. Marys Airport, along with efforts to relocate air traffic to other locations in southeast Georgia, will meet both national security and national aviation policy needs.

This legislative proposal is modeled after other provisions of law that provided for the closure of an airport, including the Rialto Municipal Airport in Rialto, California in 2005 (Section 4408 of SAFETEA-LU (Public Law 109-59; 119 Stat. 1777)) and the St. Clair, Missouri Regional Airport in 2014 (Public Law 113-285).

Subsection (a) of the proposal releases the City of St. Marys from its obligations to the FAA under existing statutes and regulations.

Subsection (b)(1) of the proposal authorizes the Department of the Navy (DON) to pay all or part of the obligation otherwise owed by the City of St. Marys to the Georgia Department of Transportation (DOT) to allow closure of the airport consistent with statutory authority and FAA regulations covering airport closure. Under this provision, DON would transfer funding to the Georgia DOT to be used only for airport development of an airport in Georgia, consistent with planning efforts conducted by the Administrator of the FAA and the Georgia DOT.

Subsection (b)(2) of the proposal sets a condition precedent that the City of St. Marys, in voluntary exchange for DON meeting the City's obligations to FAA associated with airport

closure, grants a no-cost restrictive easement or similar type property interest that prevents future use of the current airport property for aviation purposes and any other incompatible uses affecting NSB Kings Bay operations.

Subsection (b)(3) of the proposal states that the Navy will carry out an appraisal to determine the fair market value of the real property used for the St. Marys Airport.

Subsection (b)(4) of the proposal conditions the release on the FAA conducting the appropriate environmental review in connection with the release under the National Environmental Policy Act (NEPA). The review would not contemplate potential or proposed future redevelopment of St Marys airport, if and when it may be proposed. NEPA analysis in connection with any potential or proposed future airport redevelopment would occur under an environmental review process separate and apart from any required as a condition of release.

Subsections (b)(5) and (b)(6) of the proposal conditions the release on the statutory and regulatory notice requirements related to the modification of an aeronautical land-use assurance and closure.

Subsection (c) of the proposal sets out the various financial obligations, imposed by statute and FAA regulations, associated with the closure of the St. Marys Airport that DON would meet. Specifically, subsection (c)(1) of the proposal would require DON to transfer the fair market value (FMV) of the current St. Marys Airport real property. In October 2010, the St. Marys Airport property was appraised at a FMV of $5.7 million, which was accepted by FAA in 2014. An updated appraisal report will be made to appraise the current (post legislation date of value) FMV payment for FAA acceptance to satisfy the applicable airport closure requirements. Subsection (c)(2) of the proposal would require DON to transfer the unamortized value of the grant payments received by the City of St. Marys from the FAA for airport improvements, estimated at $300,000 as of February 2015. Lastly, subsection (c)(3) of the proposal would require DON to transfer the value of airport revenues, estimated at $12,000 as of February 2015.

Subsection (d) of the proposal provides authority for DON to transfer existing Operation and Maintenance (O&M, N) funding to the State of Georgia with the condition that the funds be used for the purposes of airport development in Georgia consistent with planning efforts conducted by the FAA and the Georgia DOT. As noted above, this funding would meet existing obligations owed by the City of St. Marys to FAA and allow closure of the airport in accordance with existing statutes and FAA regulations.

Subsection (e) of the proposal lays out various additional requirements. Specifically, Subsection (e)(1) would require any survey of the airport to be satisfactory to DON and FAA. Subsection (e)(2) would ensure that if a new regional airport is created in southeast Georgia it would not have similar adverse security and safety impacts as those currently associated with St. Marys Airport.

Budget Implications: 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**
Navy	6.012	0	0	0	0	Operation and Maintenance, Navy	01	BSS1	0206079N
Total	6.012	0	0	0	0				

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

Section 2812 would temporarily re-classify facility "conversion" as repair, thereby allowing all work within the existing dimensions of a facility to be considered repair for the duration of the authority.

Section 2801 of title 10, United States Code, defines military construction to include any construction, development, conversion, or extension of any kind carried out with respect to a military installation, whether to satisfy temporary or permanent requirements. Consistent with this classification, section 2811(e) of title 10 defines "repair project" as "a project to restore a real property facility, system, or component to such a condition that it may effectively be used for its designated functional purpose." Section 2811 excludes projects to convert a facility to a different functional purpose. Because of this classification, projects to convert an existing facility from one use to another are subject to the same statutory restrictions and limitations as projects to construct wholly new facilities or extensions to existing facilities.

Considering facility conversions as repair projects per section 2811 is logically sound for at least two reasons. First, the characteristics of conversion projects are more comparable to other types of repair projects than to projects to expand facilities or construct new facilities from the ground up. Conversion projects within the walls of an existing building often entail no more actual work, cost, and time than other renovation projects that do not involve a change in function (and are therefore classified as repair projects). An observer walking into an existing building project could be hard-pressed to differentiate renovation/non-conversion from renovation/conversion. Second, conversion projects have the same ultimate objective as other types of repair projects, i.e., to make *existing facility space* suitable for supporting the mission. This could be an appropriate purpose for a more comprehensive section 2811, not currently realized.

Considering conversions as repair projects offers definite benefits to the Department. Specifically, this change would:

1) Enable expeditious reuse of existing facilities, allowing existing facilities to be converted for new uses using O&M repair authority to accomplish internal renovations.

2) Allow military installations to remedy facility deficits more expeditiously, thereby reducing the need to purchase/lease temporary facilities, or lease off-base facilities until military construction projects are programmed, funded and completed.

3) Reduce the overall demand for military construction by enabling military installations to adapt existing facilities to new missions using O&M repair authority.

4) Facilitate consolidation of missions into existing space, thereby enabling military installations to vacate and demolish facilities that have exceeded their useful life, which reduces overall footprint and associated energy/utility usage.

These benefits directly support administration policy to improve efficiencies and reduce costs. A June 10, 2010 White House memo to the heads of the executive department agencies ("Disposing of Unneeded Federal Real Estate – Increasing Sales Proceeds, Cutting Costs, and Improving Energy Efficiency") directs the departments to "make better use of remaining real property assets" by "pursuing consolidation opportunities" through "innovative approaches to space management." Adaptive reuse of existing facilities through consolidation of functions in those facilities would enable innovative approaches to space management and reduce the needless consumption of scarce maintenance resources to sustain surplus facilities.

Following are current examples of the above:

FORT HOOD, TEXAS: The installation has an exchange/retail store built in 1996 with over 124,000 square feet of space that became vacant when an AAFES replacement project was completed. The installation also has numerous other tenants and missions that operate in a mix of substandard, relocatable, and/or World War II wood structures, that could benefit from re-purposing the existing retail space into a combination of administrative space, unit storage, and physical fitness center. Programming and executing multiple military construction projects to meet these other requirements would require significantly more time and money than a conversion. However, military construction funding constraints indefinitely preclude this beneficial conversion which would be feasible as an O&M-funded modernization (repair) project.

KINGS MILL MEMORIAL ARMY RESERVE CENTER, OHIO: The supporting Army Reserve Regional Support Command identified a vacated warehouse to re-purpose as a 400-Soldier Army Reserve Center. The facility would provide required training capabilities with weapon simulators, training classrooms, sensitive items vault, physical fitness area, a library and learning center, and administrative and office areas. The converted building would also support logistical storage and maintenance shops with drive-thru bays. However, military construction funding constraints indefinitely preclude this beneficial conversion which would be feasible as an O&M-funded modernization (repair) project.

FORT GORDON, GEORGIA: The current Transient Training Enlisted Barracks is a three-story masonry structure of approximately 43,000 SF constructed in 1969. Building systems have exceeded the average life expectancy of 20 years, and are failed or failing. The garrison has a new mission to support the activation of a military intelligence brigade, and programming a new military construction project would take longer and likely be more expensive. The garrison would prefer to convert the barracks to serve as a

brigade headquarters and organizational classroom, with appropriate SCIF space. However, military construction funding constraints indefinitely preclude this beneficial conversion which would be feasible as an O&M-funded modernization (repair) project.

FORT GORDON, GEORGIA: An old post exchange/retail store could be converted to serve as ~47,000 SF of general purpose administrative space. This would provide a cost-effective facility to establish the TRADOC Cyber Center of Excellence/ Signal Center of Excellence, a new and important mission. The renovation would also facilitate the demolition of 1950s-era built facilities. However, military construction funding constraints indefinitely preclude this beneficial conversion which would be feasible as an O&M-funded modernization (repair) project.

SCHOFIELD BARRACKS, HAWAII: The installation has a shortage of company operations facilities, which were exacerbated due to recent Army force structure changes that have added additional engineering capabilities into each Brigade Combat Team. Programming military construction to satisfy the requirement will take more time and money than is available. Instead, the installation wishes to convert an existing barracks to provide sufficient functional operational space to support an engineering battalion and four engineering companies. However, military construction funding constraints indefinitely preclude this beneficial conversion which would be feasible as an O&M-funded modernization (repair) project.

WAKE ISLAND: A proposed project would consolidate multiple functions into the passenger terminal and allow closure and/or demolition of excess, low- occupancy facilities with expected annual savings of approximately $15 million. However, military construction funding constraints indefinitely preclude this beneficial conversion which would be feasible as an O&M-funded modernization (repair) project.

LITTLE ROCK AFB: A proposed project would consolidate the base library, community activity center, and family support center into the former Base Exchange facility. This consolidation would generate a net reduction in real property inventory of 40,335 square feet, provide modern and efficient space, and eliminate asbestos and mold problems that are present in the buildings that currently house these functions. However, military construction funding constraints indefinitely preclude this beneficial conversion which would be feasible as an O&M-funded modernization (repair) project.

EIELSON AFB: A proposed project would convert the former Base Exchange into a Community Center and consolidate the base library, meeting and social activity rooms, and Childrens' Play Land. All of these indoor functions are essential to the well-being of Eielson's base population during the seven-month winter in central Alaska. The existing library is in the basement of an old school and is too small. The existing base community center and old school are to be demolished, resulting in reduction of real property. Military construction funding constraints preclude this beneficial conversion which would be feasible as an O&M-funded modernization (repair) project.

WRIGHT-PATTERSON AFB: The National Air and Space Intelligence Center (NASIC) needed to expand its Foreign Materiel Exploitation (FME) capabilities. Adjacent to the existing FME facility was a vacant fuel cell hangar suitable for conversion. Military construction funding constraints preclude this project indefinitely, and limited NASIC's ability to perform its FME mission. The project would be feasible as an O&M-funded modernization (repair) project.

JOINT BASE ANDREWS (JBA): Relocation of AAFES to a new exchange facility freed-up former retail space for potential use by the 11th Wing as administrative space, a Squadron Operations facility, or an Installation Deployment Readiness Center (IDRC)—all needed to support the mission of JBA. However, military construction funding constraints indefinitely preclude this beneficial conversion which would be feasible as an O&M-funded modernization (repair) project.

ELLSWORTH AFB: Downsizing of the Air Force Financial Services Center created excess space suitable for conversion to an education center or a maintenance facility to replace an existing poor facility. However, military construction funding constraints indefinitely preclude this beneficial conversion which would be feasible as an O&M-funded modernization (repair) project.

JOINT BASE LANGLEY-EUSTIS: Underutilized training barracks were evaluated for use as administrative space needed by the installation. However, military construction funding constraints indefinitely preclude this beneficial conversion which would be feasible as an O&M-funded modernization (repair) project.

JOINT BASE ELMENDORF RICHARDSON: JBER evaluated options to establish an Emergency Control Center (combined Security Forces and Fire Department) to improve efficiency both in operations and use of facility space. Several candidate facilities are available to enable this consolidation, all requiring functional conversion from their previous uses. Though this initiative would greatly improve operations and use of existing facilities, military construction funding constraints indefinitely preclude this beneficial conversion which would be feasible as an O&M-funded modernization (repair) project.

JOINT BASE ELMENDORF RICHARDSON: JBER evaluated options to relocate the Health and Wellness Center and other related functions to consolidate like services. Excess space was available that required conversion from its previous use. However, military construction funding constraints indefinitely preclude this beneficial conversion which would be feasible as an O&M-funded modernization (repair) project.

JOINT BASE ELMENDORF RICHARDSON: JBER has a need for a detention facility (jail) for military personnel arrested on the installation. Currently, detained military personnel must be housed in municipal jails in the Anchorage area, resulting in loss of positive control of military prisoners, exposure to potentially violent civilian criminals, and potential disclosure of classified information to outsiders. JBER has identified an existing facility that could be expeditiously converted for this purpose. However,

military construction funding constraints and authorization timelines have precluded this beneficial conversion which would be feasible as an O&M-funded modernization (repair) project.

Budget Implications: This proposal would allow facility conversion projects to be executed within existing resources for facilities restoration and modernization (R&M) (PEXXXX76) using Operation and Maintenance (O&M) appropriations, rather than using Military Construction appropriations. Conversion projects would compete with other O&M-funded projects to modernize existing facilities and would be funded only when sufficiently justified and prioritized. Conversion projects would not compete with facilities sustainment funding, which is provided in a different O&M-funded account. The resources reflected in the table below are funded within the FY 2017 President's Budget.

There is understandable concern about increasing O&M-funded requirements on the already overburdened O&M account. However, this concern must be weighed against the backlog of requirements in the military construction account that exceeds $10 billion over the next three years, and higher priorities for new or expanded facilities which preclude most conversion projects from being funded at all.

Shifting conversion project costs from the military construction account to the O&M account offers these benefits:

1. Beneficial conversion projects would become financially feasible. Due to the critical deficiency in the military construction account, many worthy conversion projects remain unattainable because of higher priorities for new facilities that must be funded with military construction appropriations. Conversion projects would compete successfully against other facility modernization (repair) projects toward the common goal of supporting the mission with existing facilities.

2. Net O&M requirements would decrease. Facilities would be retrofitted much more quickly (or at all) to accommodate new missions and/or consolidation into right-sized facilities with associated disposal (or further repurposing) of excess facilities, thereby hastening efficiencies in energy and sustainment.

The R&M budget request would not change respective to this authority. Within the budget, the maximum amount each Secretary may obligate using this authority in any fiscal year is $60 million.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	819.3	789.0	819.2	745.4	691.0	Operation and Maintenance, Army	01	132	0202176A

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army National Guard	204.5	217.7	211.1	211.5	212.1	Operation and Maintenance, Army National Guard	01	050	0502276A
Army Reserve	59.4	53.8	56.0	59.7	50.0	Operation and Maintenance, Army Reserve	01	132	0502276A
Air Force	383.6	470.0	387.8	385.1	377.5	Operation and Maintenance, Air Force	01	050	22176F
Air Force Reserve	34.6	22.5	22.2	31.0	32.1	Operation and Maintenance, Air Force Reserve	01	040	52576F
Air Force National Guard	31.2	39.8	36.3	57.0	58.9	Operation and Maintenance, Air National Guard	01	040	
Navy does not intend to use the authority, which would have been funded in the following accounts: Operation and Maintenance, Navy and Operation and Maintenance, Navy Reserve.									
Marine Corps does not intend to use the authority, which would have been funded in the following accounts: Operation and Maintenance, Marine Corps and Operation and Maintenance, Marine Corps Reserve.									
Totals	1,532.6	1,592.8	1,532.6	1,489.7	1,421.6				

Changes to Existing Law: This proposal would make the following change to section 2811 of title 10, United States Code:

§ 2811. Repair of facilities

(a) REPAIRS USING OPERATIONS AND MAINTENANCE FUNDS.—Using funds available to the Secretary concerned for operation and maintenance, the Secretary concerned may carry out repair projects for an entire single-purpose facility or one or more functional areas of a multipurpose facility.

(b) APPROVAL REQUIRED FOR MAJOR REPAIRS.—A repair project costing more than $7,500,000 may not be carried out under this section unless approved in advance by the Secretary concerned. In determining the total cost of a repair project, the Secretary shall include all phases of a multi-year repair project to a single facility. In considering a repair project for approval, the Secretary shall ensure that the project is consistent with force structure plans, that repair of the facility is more cost effective than replacement, and that the project is an appropriate use of operation and maintenance funds.

(c) PROHIBITION ON NEW CONSTRUCTION OR ADDITIONS.—Construction of new facilities or additions to existing facilities may not be carried out under the authority of this section.

(d) CONGRESSIONAL NOTIFICATION.—When a decision is made to carry out a repair project under this section with an estimated cost in excess of $ 7,500,000, the Secretary concerned shall submit to the appropriate committees of Congress a report containing—

(1) the justification for the repair project and the current estimate of the cost of the project, including, in the case of a multi-year repair project to a single facility, the total cost of all phases of the project;

(2) if the current estimate of the cost of the repair project exceeds 75 percent of the estimated cost of a military construction project to replace the facility, an explanation of the reasons why replacement of the facility is not in the best interest of the Government; and

(3) a description of the elements of military construction, including the elements specified in section 2802(b) of this title, incorporated into the repair project.

(e) REPAIR PROJECT DEFINED.—In this section, the term "repair project" means a project to restore a real property facility, system, or component to such a condition that it may effectively be used for its designated functional purpose.

(f) TEMPORARY AUTHORITY FOR CONVERSIONS AS REPAIR.—(1) Notwithstanding subsection (e), the Secretary concerned may carry out a repair project that converts a real property facility, system, or component to a new functional purpose without increasing its external dimensions.

(2) The maximum amount that the Secretary concerned may obligate in any fiscal year under this subsection is $60,000,000.

(3) The authority provided by this subsection expires on September 30, 2021.

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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)***

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(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)~~ a base closure law, as that term is defined in section 101(a)(17) of title 10, 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).

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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).

(D) The Defense Base Closure and Realignment Act of 2016.

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§ 2667. Leases: non-excess property of military departments and Defense Agencies

(a)***

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(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

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(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).

(C) The Defense Base Closure and Realignment Act of 2016.

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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.).

(C) The Defense Base Closure and Realignment Act of 2016.

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