SEC. 524. ENHANCEMENT OF AUTHORITY TO ACCEPT SUPPORT FOR AIR FORCE ACADEMY ATHLETIC PROGRAMS.

Section 9362 of title 10, United States Code, is amended by striking subsections (e), (f), and (g) and inserting the following new subsections:

"(e) ACCEPTANCE OF SUPPORT.—

"(1) SUPPORT RECEIVED FROM THE CORPORATION.— Notwithstanding section 1342 of title 31, the Secretary of the Air Force may accept from the corporation funds, supplies, equipment, and services for the support of the athletic programs of the Academy.

"(2) FUNDS RECEIVED FROM OTHER SOURCES.— The Secretary may charge fees for the support of the athletic programs of the Academy. The Secretary may accept and retain fees for services and other benefits provided incident to the operation of its athletic programs, including fees from the National Collegiate Athletic Association, fees from athletic conferences, game guarantees from other educational institutions, fees for ticketing or licensing, and other consideration provided incidental to the execution of the athletic programs of the Academy.

"(3) LIMITATION.—The Secretary shall ensure that contributions accepted under this subsection do not reflect unfavorably on the ability of the Department of the Air Force, any of its employees, or any member of the armed forces to carry out any responsibility or duty in a fair and objective manner, or compromise the integrity or appearance of integrity of any program of the Department of the Air Force, or any individual involved in such a program.

"(f) LEASES AND LICENSES.—

"(1) The Secretary may, in accordance with section 2667 of this title, enter into leases or licenses with the corporation for the purpose of supporting the athletic programs of the Academy. Consideration provided under such a lease or license may be provided in the form of funds, supplies, equipment, and services for the support of the athletic programs of the Academy.

"(2) The Secretary may provide support services to the corporation without charge while the corporation conducts its support activities at the Academy. In this section, the term 'support services' includes the providing of utilities, office furnishings and equipment, communications services, records staging and archiving, audio and video support, and security systems in conjunction with the leasing or licensing of property. Any such support services may only be provided without any liability of the United States to the corporation.

"(g) CONTRACTS AND COOPERATIVE AGREEMENTS.—The Secretary may enter into contracts and cooperative agreements with the corporation for the purpose of supporting the athletic programs of the Academy. Notwithstanding section 2304(k) of this title, the Secretary may enter such contracts or cooperative agreements on a sole source basis pursuant to section 2304(c)(5) of this title. Notwithstanding chapter 63 of title 31, a cooperative agreement under this section may be used to acquire property, services, or travel for the direct benefit or use of the Academy athletic programs.

"(h) TRADEMARKS AND SERVICE MARKS.—

"(1) LICENSING, MARKETING, AND SPONSORSHIP AGREEMENTS.—An agreement under subsection (g) may, consistent with section 2260 (other than subsection (d)) of this

title, authorize the corporation to enter into licensing, marketing, and sponsorship agreements relating to trademarks and service marks identifying the Academy, subject to the approval of the Secretary.

"(2) LIMITATIONS.—No such licensing, marketing, or sponsorship agreement may be entered into if it would reflect unfavorably on the ability of the Department of the Air Force, any of its employees, or any member of the armed forces to carry out any responsibility or duty in a fair and objective manner, or if the Secretary determines that the use of the trademark or service mark would compromise the integrity or appearance of integrity of any program of the Department of the Air Force, or any individual involved in such a program.

"(i) RETENTION AND USE OF FUNDS.—Any funds received under this section may be retained for use in support of the athletic programs of the Academy and shall remain available until expended.".

Section-by-Section Analysis

This proposal would amend 10 U.S.C. 9362 to enhance authority for the acceptance of support for athletic programs at the United States Air Force Academy (USAFA). The revisions to current law are primarily to address limitations on the collection, retention, and use of funds collected from third parties. The operation of a college athletic program necessarily requires that fees be paid and received from third parties, such as athletic conferences, other schools, and the NCAA. These functions were historically performed by the nonappropriated fund instrumentality (NAFI) that supported USAFA athletic programs. As the USAFA, pursuant to section 9362, seeks to terminate this NAFI, specific funding authorities are required to retain and use these fees. These matters were recently addressed by the Navy in the passage of the National Defense Authorization Act for Fiscal Year 2013, Sec. 542, *Academy Athletic Support of Naval and Physical Fitness Programs*. As the Navy legislation has already been vetted and approved by the pertinent Committees and passed by Congress, the Air Force proposed changes mirror the Navy legislation. We believe this consistency will increase chances for a successful proposal.

Modification of 10 U.S.C. 9362 is proposed by replacing current subsections (e) – (g) with new subsections (e) – (j). Explanation for each new subsection follows.

Subsection (e) – ACCEPTANCE OF SUPPORT. This section replaces the basic gift authority found in the original with the necessary and more comprehensive authority to accept

funds/services from the corporation AND other traditional athletic partners/incomes sources (e.g. NCAA, Conferences and other schools). College athletics require the provision of many services where the charging of fees is customary. For example, hosting a football game requires many activities that benefit third parties: the issuance of tickets, the provision of parking, authorization of television rights and similar services that support a safe and orderly event. The USAFA must have the authority to recoup costs and claim the value of these program elements. This clause authorizes the collection and retention of fees for services/benefits provided to others incident to the operation of USAFA athletics programs. The language conforms to Navy legislation which was passed for the same reason.

Subsection (f) – LEASES. This is similar to the original authority, with the exception that it authorizes the USAFA to provide leases and licenses to the corporation without charging rent or receiving in-kind consideration (which is required under 10 U.S.C. 2667). The new provision serves as an authority to enter into lease/license agreements at no charge (optional). Such leases may include ancillary/associated "services," which are defined in the subsection.

Subsection (g) – CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS. This authority is similar in purpose to the original section (g). The proposed replacement version reflects the recently passed Navy legislation, which adds authority to use contracts in addition to cooperative agreements. The subsection also makes it clear the AF's prior authority to enter into cooperative agreements for the direct benefit of the USAFA is maintained, notwithstanding the additional authority to enter into sole source contracts. Also, the provision will allow for the direct use of USAFA funding under the cooperative agreement to pay for travel costs, easing administrative requirements and allowing efficiencies that leverage the AFAAC's ability to enter into long-term contracts for travel.

Subsection (h) – TRADEMARKS AND SERVICE MARKS. This language is derived from the current Navy legislation. It authorizes the USAFA to provide the subject IP to the corporation via contract and, in conjunction with subsection (i), retain the fees for athletic education use. The corporation would be authorized to use such property, per AF contractual limitations.

Subsection (i) – RETENTION AND USE OF FUNDS. This section is read in conjunction with each of the preceding subsections, which authorize collection and retention of fees or funds (i.e. subsections: (e)(1) [gifts], (e)(2) [fees], (f) [leases] and (h) [trademarks]). This section, however, completes the fiscal law requirements by authorizing retention and expenditure of those funds. It is vital for program success in light of the restrictions of the Miscellaneous Receipts Act, which would otherwise require return of such funding to the General Treasury. This section also mirrors the Navy legislation.

Budget Implications: This proposal does not change resource requirements associated with the original legislation. It will allow the USAFA to decrease use of APFs by leveraging the corporate partnership provided for in the existing statute.

Changes to Existing Law: This proposal would make the following changes to section 9362 of title 10, United States Code:

§ 9362. Support of athletic programs

(a) Corporation for Support Authorized.—(1) The Secretary of the Air Force may, in accordance with the laws of the State of incorporation, establish a corporation (in this section referred to as the "corporation") to support the athletic programs of the Academy. All stock of the corporation shall be owned by the United States and held in the name of and voted by the Secretary of the Air Force.

(2) The corporation shall operate exclusively for charitable, educational, and civic purposes to support the athletic programs of the Academy.

(b) CORPORATE ORGANIZATION.—The corporation shall be organized and operated-

(1) as a nonprofit corporation under section 501(c)(3) of the Internal Revenue Code of 1986;

(2) in accordance with this section; and

(3) pursuant to the laws of the State of incorporation, its articles of incorporation, and its bylaws.

(c) CORPORATE BOARD OF DIRECTORS.—(1) The members of the board of directors of the corporation shall serve without compensation as members of the board, except for reasonable travel and other related expenses for attendance at meetings of the board.

(2) The Secretary of the Air Force may authorize military and civilian personnel of the Air Force under section 1033 of this title to serve, in their official capacities, as members of the board of directors of the corporation, but such personnel shall not hold more than one-third of the directorships.

(d) TRANSFERS FROM NONAPPROPRIATED FUND OPERATION.—The Secretary of the Air Force may, subject to the acceptance of the corporation, transfer to the corporation all title to and ownership of the assets and liabilities of the Air Force nonappropriated fund instrumentality whose functions include providing support for the athletic programs of the Academy, including bank accounts and financial reserves in its accounts, equipment, supplies, and other personal property, but excluding any interest in real property.

~~(e) ACCEPTANCE OF GIFTS.—The Secretary of the Air Force may accept from the corporation funds, supplies, and services for the support of cadets and Academy personnel during their participation in Academy or corporate events related to the athletic programs of the Academy.~~

~~(f) LEASES.—The Secretary of the Air Force may, in accordance with section 2667 of this title, lease real and personal property to the corporation for purposes related to the athletic programs of the Academy. Funds received from any such lease may be retained and spent by the Secretary to support athletic programs of the Academy.~~

~~(g) COOPERATIVE AGREEMENTS.—The Secretary of the Air Force may enter into cooperative agreements (as described in section 6305 of title 31) with the corporation for purposes related to the athletic programs of the Academy.~~

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(3) LIMITATION.—The Secretary shall ensure that contributions accepted under this subsection do not reflect unfavorably on the ability of the Department of the Air Force, any of its employees, or any member of the armed forces to carry out any responsibility or duty in a fair and objective manner, or compromise the integrity or appearance of integrity of any program of the Department of the Air Force, or any individual involved in such a program.

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"(2) The Secretary may provide support services to the corporation without charge while the corporation conducts its support activities at the Academy. In this section, the term 'support services' includes the providing of utilities, office furnishings and equipment, communications services, records staging and archiving, audio and video support, and security systems in conjunction with the leasing or licensing of property. Any such support services may only be provided without any liability of the United States to the corporation.

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(h) TRADEMARKS AND SERVICE MARKS.—

(1) LICENSING, MARKETING, AND SPONSORSHIP AGREEMENTS.—An agreement under subsection (g) may, consistent with section 2260 (other than subsection (d)) of this title, authorize the corporation to enter into licensing, marketing, and sponsorship agreements relating to trademarks and service marks identifying the Academy, subject to the approval of the Secretary.

(2) LIMITATIONS.—No such licensing, marketing, or sponsorship agreement may be entered into if it would reflect unfavorably on the ability of the Department of the Air Force, any of its employees, or any member of the armed forces to carry out any responsibility or duty in a fair and objective manner, or if the Secretary determines that the use of the trademark or service mark would compromise the integrity or appearance of integrity of any program of the Department of the Air Force, or any individual involved in such a program.

(i) RETENTION AND USE OF FUNDS.—Any funds received under this section may be retained for use in support of the athletic programs of the Academy and shall remain available until expended.