

#### GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE 1600 defense pentagon WASHINGTON, D.C. 20301-1600

GENERAL COUNSEL

### APR 1 8 2008

The Honorable Richard B. Cheney President of the Senate Washington, DC 20515

Dear Mr. President:

The Department of Defense requests that the Congress enact the enclosed legislative proposals as part of the National Defense Authorization Bill for Fiscal Year 2009.

The purpose of each proposal is stated in the accompanying section-by-section analysis.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presenting of these legislative proposals for your consideration and the consideration of the Congress.

Sincerely. el teto

Daniel J. Dell'Orto Acting

Enclosure: As stated





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## APR 1 8 2008

The Honorable Nancy Pelosi Speaker of the House of Representatives Washington, DC 20515

Dear Madam Speaker:

The Department of Defense requests that the Congress enact the enclosed legislative proposals as part of the National Defense Authorization Bill for Fiscal Year 2009.

The purpose of each proposal is stated in the accompanying section-by-section analysis.

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## SEC. \_\_\_\_. ONE-YEAR EXTENSION OF AUTHORITIES RELATING TO PAYMENT OF OTHER BONUSES AND SPECIAL PAYS.

1	(a) AVIATION OFFICER RETENTION BONUS.—Section 301b(a) of title 37, United States
2	Code, is amended by striking "December 31, 2008" and inserting "December 31, 2009".
3	(b) ASSIGNMENT INCENTIVE PAY.—Section 307a(g) of such title is amended by striking
4	"December 31, 2008" and inserting "December 31, 2009".
5	(c) REENLISTMENT BONUS FOR ACTIVE MEMBERS.—Section 308(g) of such title is
6	amended by striking "December 31, 2008" and inserting "December 31, 2009".
7	(d) ENLISTMENT BONUS.—Section 309(e) of such title is amended by striking "December
8	31, 2008" and inserting "December 31, 2009".
9	(e) RETENTION INCENTIVES FOR MEMBERS QUALIFIED IN CRITICAL MILITARY SKILLS OR
10	ASSIGNED TO HIGH PRIORITY UNITS.—Section 323(i) of such title is amended by striking
11	"December 31, 2008" and inserting "December 31, 2009".
12	(f) ACCESSION BONUS FOR NEW OFFICERS IN CRITICAL SKILLS.—Section 324(g) of such
13	title is amended by striking "December 31, 2008" and inserting "December 31, 2009".
14	(g) INCENTIVE BONUS FOR CONVERSION TO MILITARY OCCUPATIONAL SPECIALTY TO
15	EASE PERSONNEL SHORTAGE.—Section 326(g) of such title is amended by striking "December
16	31, 2008" and inserting "December 31, 2009".
17	(h) ACCESSION BONUS FOR OFFICER CANDIDATES.—Section 330(f) of such title is
18	amended by striking "December 31, 2008" and inserting "December 31, 2009".
19	(i) HEALTH PROFESSIONS OFFICER REFERRAL BONUS.—Section 1030(i) of title 10, United
20	States Code, is amended by striking "December 31, 2008" and inserting "December 31, 2009".
21	(j) ARMY REFERRAL BONUS.—Section 3252(h) of such title is amended by striking

#### 1 "December 31, 2008" and inserting "December 31, 2009".

#### **Section-by-Section Analysis**

This section would extend for one year, through December 31, 2009, accession, conversion, and retention bonuses for military personnel possessing or acquiring critical skills or assigned to high priority units, including occupations that are arduous or that feature extremely high training and replacement costs. It also would extend incentive pay for members in designated assignments, and the bonus for transfers between the Armed Forces. Experience shows that retention of members in critical skills would be unacceptably low without these incentives, which in turn would generate the substantially greater costs associated with recruiting and developing replacements. The Department of Defense and the Congress long have recognized the cost-effectiveness of financial incentives in supporting effective staffing in such critical military skills, assignments, and high priority units.

**Cost Implications:** There are no additional costs associated with this section, because this section merely would continue critical recruiting and retention incentive programs the Department of Defense funds each year. The military departments have projected expenditures of \$1.5415 billion each year from fiscal year (FY) 2009 through FY 2013 for these incentives in their budget proposals, to be funded from their Military Personnel accounts.

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Army	67,296	67,296	67,296	67,296	67,296
Navy	34,750	34,750	34,750	34,750	34,750
Marine Corps	23,453	23,453	23,453	23,453	23,453
Air Force	5,766	5,766	5,766	5,766	5,766
Total	131,265	131,265	131,265	131,265	131,265

#### **NUMBER OF PERSONNEL AFFECTED**

#### **RESOURCE REQUIREMENTS (\$MILLIONS)**

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Army	\$579.1	\$579.1	\$579.1	\$579.1	\$579.1
Navy	\$319.7	\$319.7	\$319.7	\$319.7	\$319.7
Marine Corps	\$462.9	\$462.9	\$462.9	\$462.9	\$462.9
Air Force	\$179.8	\$179.8	\$179.8	\$179.8	\$179.8
Total	\$1,541.5	\$1,541.5	\$1,541.5	\$1,541.5	\$1,541.5

#### SEC. \_\_\_\_. REPEAL OF PROHIBITION ON MILITARY TO CIVILIAN

#### CONVERSIONS OF HEALTH CARE PERSONNEL.

Section 721 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law

2 110-181; 122 Stat. \_\_\_\_) is repealed.

1

#### Section-by-Section Analysis

This provision would repeal section 721 of the National Defense Authorization Act for Fiscal Year 2008, restoring the provisions of section 742 of the John Warner National Defense Authorization Act for FY 2007 (Public Law 109-364). The certification requirements of the latter provision have proven an effective tool to ensure that only positions that may be effectively converted without detrimental cost, access or quality impacts are selected for conversion.

The Department of Defense initiated conversion of military-to-civilian personnel within the Defense Health Program (DHP) for those military authorizations or billets that were identified by the military departments as not being essential to support the readiness or war fighting requirements of the Department. The Medical Readiness Review (MRR) commenced in 2004 to examine the military medical force structure and to set the foundation for future militaryto-civilian conversion initiatives. The MRR analyzed a significant portion of the medical force structure and identified 17,201 military medical positions that could potentially be converted to civilian positions. The positions converted from Fiscal Year (FY) 2005-2008 are being filled by civilians or contractor personnel and create cost savings without harming operational readiness or access to quality healthcare.

Prior Conversions of Military Medical P	ositions to	o Civiliar	1	
Army	FY 2005	FY 2006	FY 2007	FY 2008
Total Military-to-Civilian Conversions Reported in FY07 NDAA Certification	0	1,068	601	738
Conversions Certified by Secretary of the Military Department (or designee)	n/a	1,068	436	438
Number of Conversions Not Certified	n/a	0	165	300 <sup>1</sup>
<sup>1</sup> 300 positions are not for the provision of health care functions and thus are not subject to the certification requirement per Office of General Counsel guidance				
Navy	FY 2005 <sup>2</sup>	FY 2006	FY 2007	FY 2008
Total Military-to-Civilian Conversions Reported in FY07 NDAA Certification	1,772	215	689	1,036
Conversions Certified by Secretary of the Military Department (or designee)	n/a	215	559	791
Number of Conversions Not Certified	n/a	0	130	245

<sup>2</sup> FY2005 conversions did not require certification				
Air Force	FY 2005	FY 2006	FY 2007	FY 2008
Total Military-to-Civilian Conversions Reported in FY07 NDAA Certification	0	403	813	954
Conversions Certified by Secretary of the Military Department (or designee)	n/a	403	813	954
Number of Conversions Not Certified	n/a	0	0	0

Section 742 of the John Warner National Defense Authorization Act for FY 2007 (Public Law 109-364) required certification by the Secretaries of the military departments that the conversions would not increase costs or decrease access to or quality of care. The Secretaries already have certified that all or part of the planned FY 2007 and 2008 conversions are executable without compromising cost, quality, or access.

Section 721 of the FY 2008 NDAA forces all planned FY 2008 conversions to cease and prohibits any future conversions through FY 2012. This prohibition has created chaos in planned personnel actions in FY 2008, essentially guaranteeing a detrimental impact on medical staffing levels and access to care, and prevents planned future conversions of billets that have been identified as viable for conversion and excess to military readiness requirements. In some cases, these are billets that have been difficult to fill with uniformed personnel; prohibition of conversion seems based on the dubious assumption that it is easier to recruit and fill a military position, with its inherent risks and hardships, than it is to recruit and fill a civilian or contractor position.

The FY 2009 President's Budget request includes 2,036 military-to-civilian conversions for military billets that support the Military Health System.

**Cost Implications:** The 2,036 conversions scheduled for FY 2009 would save \$22.5 million in DHP and DHP-related military personnel costs (these savings already have been applied to other requirements), plus an additional amount of uncalculated savings that would accrue to the military departments for reduced training costs, housing costs, child care costs, commissary costs, etc.

#### SEC. \_\_\_\_. FIELDING OF BALLISTIC MISSILE DEFENSE CAPABILITIES.

1	(a) AVAILABILITY OF RESEARCH, DEVELOPMENT, TEST, AND EVALUATION FUNDS FOR
2	FISCAL YEAR 2010.—Upon approval of the Secretary of Defense, and consistent with the plan
3	submitted as required by section 223(f) of the National Defense Authorization Act for Fiscal
4	Year 2008 (Public Law 110-181; 122 Stat), funds appropriated pursuant to an authorization
5	of appropriations or otherwise made available for fiscal year 2010 for research, development,
6	test, and evaluation for the Missile Defense Agency may be used to complete development and
7	fielding of the following ballistic missile defense capabilities:
8	(1) Ground-based interceptors 30-54;
9	(2) THAAD Fire Units 1 and 2;
10	(3) Aegis Block IA missiles 46 through 72;
11	(4) The first increment of Aegis Block IB missiles; and
12	(5) AN/TPY-2 radars.
13	(b) PROHIBITION OF USE OF FUNDS FOR MILITARY CONSTRUCTION.—Research,
14	Development, Test, and Evaluation funds approved for use pursuant to subsection (a) may not be
15	used for military construction activities.

#### **Section-by-Section Analysis**

This section would provide authority in fiscal year (FY) 2010 for the Department of Defense to use Research, Development, Test and Evaluation (RDT&E) funding to complete the development and fielding of certain ballistic missile defense capabilities.

In December 2002, the President directed the Department of Defense (DoD) to field a missile defense capability, beginning in 2004, and continuously to improve on that capability over time. The Department executes that direction through the Missile Defense Agency (MDA). The MDA uses an evolutionary, capability-based acquisition approach to field Ballistic Missile Defense System (BMDS) capabilities and improve those capabilities through the spiral development, and the subsequent fielding, of incremental upgrades to individual BMDS elements and components.

Historically, the MDA has been funded almost entirely with Defense-Wide RDT&E funds. In section 231 of the Ronald W. Reagan National Defense Authorization Act for FY 2005, section 233 of the National Defense Authorization Act for FY 2006, and section 221 of the National Defense Authorization Act for FY 2007, Congress has supported the President's directive by authorizing the RDT&E funds appropriated for the MDA to be used for fielding purposes since fielding requires a range of activities that cross traditional fiscal lines.

Beginning in fiscal year 2009, MDA's authority to use RDT&E for fielding will change. First, MDA's existing authority in section 221 of the National Defense Authorization Act for FY 2007 expires in that the last fiscal year of funds for which the current authority can be exercised is fiscal year 2008. Second, section 223 of the National Defense Authorization Act for FY 2008 (Public Law 110-181), provides that, beginning with FY 2009, the MDA may use this authority only for fielding those capabilities approved previously by the Congress. In addition, section 223 provides that the MDA's RDT&E funds may not be used for military construction activities or for procurement or advance procurement of long lead items, for Terminal High Altitude Area Defense (THAAD) firing units 3 and 4, or Standard Missile-3 (SM-3) Block 1A interceptors. Section 223 instead requires that the THAAD firing units and SM-3 interceptors be acquired with Procurement funds. To mitigate the normal requirement for full funding of Procurement activities, section 223 provides authority to execute these specific Procurement activities on an incremental basis, at least during fiscal years 2009 and 2010.

Section 223 also requires MDA to submit a plan for transitioning from using exclusively RDT&E funds to a budget which includes procurement, military construction, and operations and maintenance funds. The plan must also address the transition from incremental execution of Procurement funds in fiscal years 2009 and 2010 to full funding in fiscal years after 2010. For FY 2010, section 223 requires that MDA submit a budget with appropriate requests for RDT&E, Procurement, Military Construction, and Operations & Maintenance funds.

This proposal recognizes that MDA's current statutory authority expires with FY 2008 funds and recognizes the enactment of section 223. If enacted in FY 2009, this proposal would permit MDA to continue, during FY 2010, the development and fielding of certain capabilities begun under the RDT&E-only approach. The essential advantage offered by this approach is that the Secretary of Defense will meet emerging challenges and complete fielding of the specified capabilities within the shortest possible times. It will also avoid the need to switch from one appropriation to another during fiscal year 2010 for the capabilities specified.

As written, the proposal would provide continued authority to execute the specified activities only for fiscal year 2010. MDA requirements for program funding and execution in subsequent fiscal years will be described in the transition plan required by section 223. MDA options in the event the Congress declines to enact similar authority in fiscal years subsequent to FY 2010 can best be assessed after the transition plan required by section 223 is submitted and committee staff reactions are obtained.

**Cost Implications:** This proposal would have no budgetary impact. The MDA will not require any additional budget authority to execute this authority. Enactment of this provision

contemplates that MDA is now required, beginning in FY2009, to conduct certain activities with Procurement funding and to transition to the use of multiple appropriations in FY 2010 rather than continue with its practice of funding development and fielding exclusively with RDT&E funds. For the missile defense elements or capabilities listed, enactment of this provision would not create any additional budget resources for use by the MDA nor would it change the MDA's top line. It would instead permit the MDA to continue programming and budgeting for these elements or capabilities within the Defense-Wide RDT&E account, MDA sub-account, rather than to program or budget for them in the procurement, O&M, or Military Construction appropriations.

# SEC. \_\_\_\_. AUTHORITY TO TRANSFER NAVAL VESSELS TO CERTAIN FOREIGN COUNTRIES.

1	(a) TRANSFERS BY GRANT.—The President is authorized to transfer vessels to foreign
2	countries on a grant basis under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C.
3	2321j), as follows:
4	(1) PAKISTAN.—To the Government of Pakistan, the "OLIVER HAZARD
5	PERRY" class guided missile frigate MCINERNEY (FFG-8).
6	(2) GREECE.—To the Government of Greece, the "OSPREY" class minehunter
7	coastal ships OSPREY (MHC-51) and ROBIN (MHC-54).
8	(3) CHILE.—To the Government of Chile, the "KAISER" class oiler ANDREW J.
9	HIGGINS (AO-190).
10	(4) PERU.—To the Government of Peru, the "NEWPORT" class amphibious tank
11	landing ships FRESNO (LST-1182) and RACINE (LST-1191).
12	(b) ALTERNATIVE TRANSFER AUTHORITY.—In the event that a country to which a vessel
13	transfer is authorized under subsection (a) declines to accept the transfer, the President is
14	authorized to transfer such vessel to another eligible recipient justified to the Congress as
15	required by law for the fiscal year in which the transfer is authorized. Each such transfer shall be
16	on a sale basis under section 21 of the Arms Export Control Act (22 U.S.C. 2761), or a grant
17	basis under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j), and shall be
18	subject to the applicable Congressional notification requirements of those Acts.
19	(c) GRANTS NOT COUNTED IN ANNUAL TOTAL OF TRANSFERRED EXCESS DEFENSE
20	ARTICLES.—The value of a vessel transferred to another country on a grant basis pursuant to
21	authority provided by subsection (a) or (b) shall not be counted against the aggregate value of

excess defense articles transferred to countries in any fiscal year under section 516 of the Foreign
Assistance Act of 1961 (22 U.S.C. 2321j).

3	(d) COSTS OF TRANSFERS.—Any expense incurred by the United States in connection
4	with a transfer authorized by this section shall be charged to the recipient (notwithstanding
5	section 516(e)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j(e)(1) in the case of a
6	transfer authorized to be made on a grant basis).
7	(e) REPAIR AND REFURBISHMENT IN UNITED STATES SHIPYARDS.—To the maximum
8	extent practicable, the President shall require, as a condition of the transfer of a vessel under this
9	section, that the country to which the vessel is transferred have such repair or refurbishment of
10	the vessel as is needed, before the vessel joins the naval forces of that country, performed at a
11	shipyard located in the United States, including a United States Navy shipyard.
12	(f) EXPIRATION OF AUTHORITY.—The authority to transfer a vessel under this section
13	shall expire at the end of the two-year period beginning on the date of the enactment of this Act.

#### **Section-by-Section Analysis**

This section would authorize the President to transfer by grant six excess naval vessels to Pakistan, Greece, Chile, and Peru. Because these naval vessels displace in excess of 3,000 tons or are less than 20 years of age, section 7307(a) of title 10, United States Code, requires statutory approval for the transfers.

In accordance with section 7307(a) of title 10, United States Code, as amended by section 1013 of the National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2376), for those vessels specifically authorized for transfer by name in section (a) the Secretary of Defense may substitute another vessel of the same class if the vessel substituted has virtually identical capabilities as the named vessel.

These proposed transfers would improve the United States' political and military relationships with close allies. They would support strategic engagement goals and regional security cooperation objectives. Active use of former naval vessels by coalition forces in support of regional priorities is more advantageous than retaining vessels in the Navy's inactive fleet and disposing of them by scrapping or another method.

The United States would incur no costs in transferring these naval vessels. The recipients would be responsible for all costs associated with the transfers, including maintenance, repairs, training, and fleet turnover costs.

This section does not alter the effect of the Toxic Substances Control Act (or any other law) with regard to their applicability to the transfer of ships by the United States to foreign countries for military or humanitarian use. The laws and regulations that apply today would apply in the same manner if this section were enacted.

## SEC. \_\_\_\_. REPEAL OF REQUIREMENT TO SUBMIT CERTAIN ANNUAL REPORTS TO CONGRESS REGARDING ALLIED CONTRIBUTIONS TO THE

#### **COMMON DEFENSE.**

1

Section 1003 of the Department of Defense Authorization Act, 1985 (Public Law 98-525;

2 98 Stat. 2576) is amended by striking subsections (c) and (d).

#### Section-by-Section Analysis

This section would relieve the Secretary of Defense of the requirement to report annually to Congress on certain information relating to allied contributions to the common defense. These reporting requirements purport to assess the defense contributions of other countries according to metrics that were relevant during the 1980s, but that are now largely obsolete. Reports on allied and partner contributions to global security should track national security priorities and should at a minimum include major partners in the Global War on Terror, including Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) coalition members.

Newer reporting requirements track the North Atlantic Treaty Organization (NATO) Prague Capabilities Commitment and the NATO Response Force agreements, both of which are more accurate measures of the value of allied contributions than the budgetary details that are the focus of the report required by section 1003 of the Department of Defense Authorization Act, 1985 (Public Law 98-525). Moreover, these new requirements are in addition to -- rather than in lieu of -- existing ones, resulting in an unnecessary duplication of effort. Most of the information that is not supplanted by more recent legislation is now publicly available in the NATO Handbook. In addition, the Report on Allied Contributions to the Common Defense is too rigid to accommodate the increasingly central role of ad hoc, mission-specific, coalitions; consequently, dozens of countries that are participating in OIF and OEF as full coalition partners are not considered "allies" for purposes of the existing report.

#### SEC. \_\_\_\_. REPEAL OF SCORING OF OUTLAYS REPORT.

1	(a) IN GENERAL.—Section 226 of title 10, United States Code, is repealed.
2	(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 9 of such

3 title is amended by striking the item relating to section 226.

#### Section-by-Section Analysis

Section 226 of title 10, United States Code, requires the Director of the Office of Management and Budget (OMB) and the Director of the Congressional Budget Office (CBO) to provide Congress with a joint report, no later than April 1 of each year, containing an agreed-upon resolution of all of the differences between the technical assumptions used by OMB and CBO in preparing the estimates with respect to all accounts in function 050 (national defense) for the budget to be submitted to Congress in the following year. If the two Directors are unable to agree upon any technical assumption, the report reflects the use of averages of the relevant account rates used by the two offices. This proposal would repeal this reporting requirement.

This report is unnecessary because it largely duplicates information already provided in the President's Budget. Furthermore, OMB and CBO already work together to reconcile outlay estimates and regularly alert Congress to where outlay estimates differ.

# SEC. \_\_\_\_. ESTABLISHMENT OF A PILOT PROGRAM FOR STABILITY OPERATIONS FELLOWSHIPS.

1	"(a) AUTHORITY TO USE FUNDS.—The Secretary of Defense, with the concurrence of the
2	Secretary of State, may conduct a two-year pilot program using funds appropriated to the
3	Department of Defense to pay any costs associated with the education and training of foreign
4	military officers and other foreign officials at military or civilian educational institutions,
5	regional centers, conferences, seminars, or other training programs conducted under the Stability
6	Operations Fellowship Program, including the costs of transportation and travel and subsistence
7	costs. Funds also may be used with the concurrence of the Secretary of State to provide English
8	and strategic foreign language training and education to increase the capacity of governments of
9	foreign countries to cooperate with the United States or to conduct stability operations in lieu of
10	United States forces.
11	"(b) LIMITATION.—The total amount of funds used under the authority in subsection (a)
12	in any fiscal year may not exceed \$5,000,000.
13	"(c) REPORT REQUIRED.—Not later than February 1, 2010, the Secretary of Defense shall
14	submit to the Committee on Armed Services of the Senate and the Committee on Armed
15	Services of the House of Representatives a report that shall include the following matters:
16	"(1) A complete accounting of the expenditure of appropriated funds for purposes
17	authorized under subsection (a), including—
18	"(A) the countries of the foreign officers and officials for whom costs
19	were paid; and
20	"(B) for each such country, the total amount of the costs paid.
21	"(2) The training courses attended by the foreign officers and officials, including a

1	specification of which, if any, courses were conducted in foreign countries.
2	"(d) OBLIGATION OF FUNDS.—Funds made available to carry out the purposes of
3	subsection (a) in any fiscal year may be obligated for the total cost of education and training
4	programs that begin in such fiscal year and end in the next fiscal year.
5	"(e) EXPIRATION.—The authority provided under subsection (a) may not be exercised
6	after September 30, 2010.".

#### **Section-by-Section Analysis**

This section would create a pilot Stability Operations Fellowship Program (SOFP) modeled on the highly-successful Combating Terrorism Fellowship Program (CTFP). This program would build partner capacity and capabilities for stability operations, counter-insurgency, peacekeeping, health, and disaster response and preparedness by: (1) providing multilateral capacity building through Mobile Education and Training Teams and Department of Defense Regional Center programs; (2) rapidly retargeting partner nations and specific individuals according to shifting regional priorities or threats in just weeks; (3) offering predeployment training, including English and strategic language (*e.g.*, Pashto, Farsi, Arabic, etc.) instruction, to enable partners to conduct stability operations more effectively with or in lieu of United States Forces; and (4) creating a global network of stability operations experts.

Combatant Commanders would benefit from having another tool to rapidly address emerging operational requirements and target non-traditional partners like CTFP. SOFP would be subject to the same Country Team and Main State approval and vetting processes as CTFP. All participants would require Secretary of State approval and compliance with Leahy vetting procedures.

This section would authorize \$5 million for Stability Operations Fellowships, and the authority would be valid until September 30, 2010. The return on investment would be decreased pressure on U.S. forces and a larger cadre of partners ready to perform stability operations tasks alongside or in lieu of United States military personnel.