SEC. 1012. TECHNICAL CLARIFICATION OF SCOPE OF PROCEDURES REQUIRED FOR PERIODIC DETENTION REVIEW OF INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.

(a) TECHNICAL CLARIFICATION.—In establishing and applying the procedures required by section 1023 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 125 Stat. 1564; 10 U.S.C. 801 note) for implementing the periodic review process required by Executive Order No. 13567, issued on March 7, 2011, as such procedures pertain to individuals detained as of that date at United States Naval Station, Guantanamo Bay, Cuba, pursuant to the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note), the Secretary of Defense may (notwithstanding subsection (b)(3) of such section) provide that the periodic review process required by section 3 of that Executive Order applies to such a detainee only if the detainee is described in section 1(a) of such Executive Order, as in effect on December 31, 2011.

(b) NOTIFICATION OF MODIFICATION OF PROCEDURES.—

(1) REQUIREMENT. —The Secretary of Defense shall submit to the appropriate committees of Congress a notification of any modification under the authority of subsection (a) to the procedures submitted to those committees under section 1023 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 125 Stat. 1564; 10 U.S.C. 801 note). Any such notification shall be submitted not later than 15 days before the date on which such modification goes into effect.

22 (2) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the

23 term ''appropriate committees of Congress'' has the meaning given that term in

24 subsection (c) of such section 1023.

Section-by-Section Analysis

This techncial proposal would clarify congressional intent that, while section 1023 of the National Defense Authorization Act for Fiscal Year 2012 (FY12 NDAA) (Public Law 112-81) requires the Executive branch to apply the periodic review process of Executive Order 13567 to any detainee who may be brought to Guantanamo Bay in the future, that section does not change the scope of Executive Order 13567 as to those detainees at Guantanamo Bay as of the date of enactment of the FY12 NDAA (Dec. 31, 2011) who are required to be provided periodic review boards.

Specifically, a periodic review board under Section 3 of the Executive Order is to be provided to any individual detained at Guantanamo Bay, Cuba as of the date of issuance of that Executive order (March 7, 2011), who the interagency review established by Executive Order 13492 has (1) designated for continued law of war detention; or (2) referred for prosecution, except for those detainees against whom charges are pending or a judgment of conviction has been entered. An individual detained at Guantanamo Bay, Cuba, as of that date who was previously designated for transfer or conditional detention under Executive Order 13492 will receive review under Section 5 of Executive Order 13567.

Section 1023 of the FY12 NDAA requires the Secretary of Defense to submit procedures for "implementing the periodic review process required by Executive Order 13567," which "clarify that the periodic review process applies to any individual who is detained as an unprivileged enemy belligerent at United States Naval Station, Guantanamo Bay, Cuba, at any time." This proposal obviates any possible interpretation under which this language could be read to require the Secretary to provide periodic review boards under Section 3 of Executive Order 13567 to detainees currently at Guantanamo Bay who were previously designated for transfer or conditional detention by the interagency review established by Executive Order 13492, or who have charges pending or a judgment of conviction.

Budget Implications: This proposal would clarify that the Secretary of Defense is not required to provide periodic review boards to detainees currently at Guantanamo Bay who are designated for transfer or conditional detention, which is the assumption for the current resourcing for periodic review boards at Guantanamo Bay. Notwithstanding the enactment of section 1023 of the FY 12 NDAA, no budget increase has been provided for the periodic review board process. This proposal is therefore budget neutral.

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