



GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
1600 DEFENSE PENTAGON
WASHINGTON, D. C. 20301-1600

MAY 18 2007

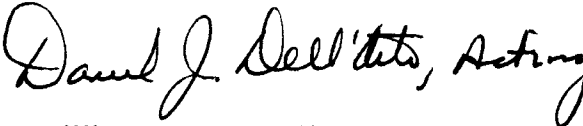
The Honorable Richard B. Cheney
President of the Senate
Washington, D.C. 20510

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 2008. 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 presenting these legislative proposals for your consideration and the consideration of the Congress.

Sincerely,

for 
William J. Haynes II

Enclosure:
As stated





GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
1600 DEFENSE PENTAGON
WASHINGTON, D. C. 20301-1600

MAY 18 2007

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, D.C. 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 2008. 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 presenting these legislative proposals for your consideration and the consideration of the Congress.

Sincerely,

David J. Dell'Utri, Acting
for William J. Haynes II

Enclosure:
As stated



**SEC. ____ . CLARIFICATION OF APPLICATION OF RETIRED PAY MULTIPLIER
PERCENTAGE TO MEMBERS OF THE UNIFORMED SERVICES WITH
OVER 30 YEARS OF SERVICE.**

1 (a) COMPUTATION OF RETIRED AND RETAINER PAY FOR MEMBERS OF THE NAVAL
2 SERVICE.—The table in section 6333(a) of title 10, United States Code, is amended by striking
3 "75 percent" in formula A under the column designated "Column 2" and inserting "Retired pay
4 multiplier prescribed under section 1409 for the years of service that may be credited to him
5 under section 1405".

6 (b) RETIRED PAY FOR CERTAIN MEMBERS RECALLED TO ACTIVE DUTY.—The table in
7 section 1402(a) of such title is amended—

8 (1) in the column designated "Column 2", by striking "by" in the heading and
9 inserting "by³";

10 (2) by striking the column designated "Column 3"; and

11 (3) by adding after footnote 2 the following new footnote:

12 "³For a member who retired before January 1, 2007, with 30 or more years of creditable
13 service and who has been recalled and served on active duty for a continuous period of less than
14 two years, the retired pay multiplier used in computing retired pay under this subsection will be
15 the sum of 75 percent for the years of service that may be credited in computing retired pay, plus
16 2½ percent for each year of additional active service after becoming entitled to retired pay."

17 (c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect
18 as of January 1, 2007.

Section-by-Section Analysis

Section 642 of the John Warner National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2007 (Public Law 109-364) amended sections 1409 and 12739 of title 10, United States Code, to remove the 75 percent cap on the retired pay multiplier for certain service of members of the uniformed services serving in excess of 30 years. This proposed amendment would make conforming changes to sections 1402 and 6333 of title 10.

Section 642 of the NDAA for FY 2007 removed the 75 percent cap on the retired pay multiplier for all members of the uniformed services. Members, including retirees recalled to active duty, fall in two major categories for retired pay computation: (1) those who first became members before September 8, 1980 (known as final-pay retirees); and (2) those who first became members after September 7, 1980 (known as high-three retirees). The table in section 1402(a) of title 10 has a restriction with regard to the recalculation of retired pay for final-pay retirees recalled to active duty that limits the retired pay multiplier to 75 percent. High-three retirees, governed by section 1402a of title 10, have no similar restriction. The first opportunity for a high-three retiree to qualify for more than 75 percent of his pay base is September 8, 2010 (after 30 years of service). If recalled to active duty after retirement, such retirees are eligible for a retired pay multiplier increase proportional to their additional amount of post-retirement service. This would provide a reasonable incremental increase in retired pay that would exceed 75 percent.

On the other hand, there is a concern that final-pay retirees who retired before January 1, 2007, with more than 30 years of service may seek to be recalled to active duty for brief periods of time merely to benefit from the new multiplier. Such retirees would experience a windfall due to the recalculation of their retired pay with the new multiplier. For example, the retired pay for a member who retired with 38 years of service at 75 percent of pay base could be recalculated at 95 percent of pay base for a single day of reactivation.

The Department of Defense currently is utilizing 1409(a) of title 10 to compute multipliers over 75 percent for recalled members and for Navy and Marine Corps members. While the more inclusive language available in section 1409(a) overcomes the restrictive language in the tables under sections 1402(a) and 6333(a), the Department proposes removing any apparent conflict between sections 1409(a), 1402(a), and 6333(a) by conforming the tables under sections 1402(a) and 6333(a) to the changes made by last year's NDAA. These proposed changes also would provide protection against the potential abuse of short periods of recall to active duty for the purpose of recalculating the retired pay multiplier based on previous years of service.

Cost Implications: This section would have no cost implications. The Department already has imposed a required minimum reactivation period of at least two years by policy memo dated December 22, 2006, before the Department would recompute the retired pay multiplier when a retired member is recalled to active duty without the former 75 percent limit. Therefore, this section simply would make conforming amendments to clarify existing legislation, policy, and procedures. Since this section does not propose changes to existing procedures or processes, it would not generate an additional cost.

SEC. ____ . INCREASE IN AUTHORIZED NUMBER OF MEMBERS IN PAY GRADE

E-9.

- 1 Section 517(a) of title 10, United States Code, is amended by striking "1 percent" and
2 inserting "1.25 percent".

Section-by-Section Analysis

This section would modify section 517 of title 10, United States Code, to increase the upper limit on the authorized daily average of active duty enlisted members in pay grade E-9 from the current 1 percent of the enlisted force to 1.25 percent. This change would increase the maximum limit for personnel in pay grades E-8 and E-9, combined, to 3.75 percent. This section would provide a permanent change to the current cap, but the decision to execute to the new cap is discretionary.

The range of challenges faced by the military today includes those ambiguous situations residing between peace and war, such as peacekeeping and peace endorsement operations, as well as non-combat humanitarian relief operations and support to domestic authorities. Complex contingencies such as humanitarian relief or peace operations require a rapid, flexible response to achieve national objectives in the required timeframe. These challenges will require a Total Force composed of senior, well-educated, motivated, and competent people who can adapt to the many demands of future missions. As Navy emerges from a period of reducing active-duty end strength, the senior ranks are a critical lynch pin in accomplishing the mission. The core of the force will continue to be individuals of exceptional dedication and ability -- people of outstanding character committed to an ethic of selfless service. In support of this mission, the military departments need a change in current law to gain the necessary discretion to transform to a more senior, seasoned force.

As Navy end strength stabilizes and new Global War on Terror (GWOT) requirements emerge, the need for more seasoned Sailors has become increasingly critical to supporting the mission. Navy has invested in future capabilities with technological advances that require fewer people and more talent. The guided missile cruisers of today require a ship's complement of 400; future cruisers will require approximately 150 personnel. While such a transformation supports decreased aggregate end strength, it does not necessarily support a commensurate reduction in personnel in pay grade E-9, as each ship continues to require an E-9. In response to GWOT, and with the full knowledge of the need to permanently enhance our special operations capabilities, Navy established the Sea Air Land (SEAL)/ Special Warfare Craft Crewman Combatant (SWCC), Explosive Ordnance Disposal (EOD), and Diver as stand-alone communities with direct accessions. To stay within Title 10 limits, 350 E-9 billets from other ratings were rolled down to accommodate the new growth. This had a significant impact on advancement opportunities for other ratings, in direct contrast to the Department of Defense Personnel and Readiness Strategic Plan, which supports an effective policy to attract, retain, and motivate a high quality, diverse, and sufficiently-sized force to meet mission requirements.

Work requirements are reflected in officer and enlisted program authorizations (OPA/EPA). However, because of the limits set forth in section 517 of title 10, Navy must suppress its E-9 inventory, as compared to its E-9 EPA, to remain compliant with the law. As Navy continues to reshape its force to reduce or eliminate unproductive junior work (i.e., E-1 through E-4 billets), there will be an increasing disconnect between the EPA and inventory because the change in billet structure will only serve to increase the proportion of E-9 billets compared to the entire force. Navy's true requirement calls for an EPA of 3,029 E-9 personnel; however, inventory will have to be suppressed to 2,856. After completion of an E-9 billet validation process, a net total of 226 billets were rolled down. Given that the fiscal year (FY) 2008 EPA reflects the appropriate demand signal, current law -- designed for the manual-labor intensive Cold War era military -- hampers Navy's ability to meet that demand.

Ratings such as Master at Arms, Intelligence Specialist, Cryptologic Technician, SEAL, SWCC, and EOD/DIVER have experienced senior enlisted growth due not only to current GWOT requirements, but also to the need to provide a permanent change in the grade/skill mix to deliver the 21st century special operations war-fighting capability. As requirements continue to grow, senior enlisted ratings likewise will need to grow to meet operational requirements. Currently, the E-9 percentages for SEALs and SWCCs are made possible by shifting grade compensation from other Navy enlisted communities so the overall cap limits are maintained. As this trend continues, other ratings will bear the brunt of the growth at the E-9 level. This will require further modifications to force structure and the mandated E-9 caps will continue to impede right-sizing the force.

Cost Implications: The Department of Defense (DoD) estimates that this section would cost \$211.0 million over the course of the Future Years Defense Plan (FY 2008-2012).

Fiscal Year	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Cost (\$Millions)	21.7	45.0	46.5	48.1	49.7

These costs represent the maximum that could occur to Navy and are indicated solely to provide the potential resource requirements if the cap for E-9s was actually raised to 1.25 percent. However, Navy intends to manage E-9s within the Military Personnel, Navy Appropriation and will not require an increase in Total Obligational Authority.

Cost Methodology: The DoD estimated the cost of this section by calculating the difference between a limit of 1 percent of the enlisted force and a limit of 1.25 percent, as compared to the FY 2008 control (the last available control data) and assuming no increase in total end strength. The DoD took into account that the current E-9 percentage limit has had a trickle-down effect on suppressing advancements to the E-4 level. The DoD then multiplied the difference between 1 percent and 1.25 percent (714) by the difference in E-4 and E-9 pay, using the current Annual DoD Composite Cost Factor rate. The DoD based the cost for FY 2008 on half of the full annual cost to account for the passage of time between date of enactment of this Act and the implementation of this section. Finally, the DoD inflated costs by 3.4 percent to calculate the costs for FY 2009 through FY 2012.

**SEC. ____ . CONTRACTING IN SUPPORT OF MILITARY OPERATIONS OR
STABILITY OPERATIONS IN AFGHANISTAN OR IRAQ.**

1 (a) CONTRACTING IN SUPPORT OF MILITARY OPERATIONS OR STABILITY OPERATIONS IN
2 AFGHANISTAN OR IRAQ.—For procurements of products, construction materials, or services by
3 the Department of Defense in support of military operations or stability operations in
4 Afghanistan or Iraq (including security, transition, reconstruction, and humanitarian relief
5 activities), when the Secretary of Defense concludes that it is in the interests of the United States
6 and also in the interests of Afghanistan or Iraq, the Secretary of Defense, in accordance with
7 regulations established by the Secretary, may—

8 (1) limit competition to offers of products, construction materials, or services that
9 are from Afghanistan or Iraq;

10 (2) use procedures other than competitive procedures to award a contract to a
11 particular source or sources to establish or maintain a facility, producer, manufacturer or
12 other supplier in Afghanistan or Iraq to provide products, construction materials, or
13 services that are from Afghanistan or Iraq; or

14 (3) provide a preference to offers of products, construction materials, or services
15 that are from Afghanistan or Iraq.

16 (b) DEFINITIONS.—In this section:

17 (1) A product is from Afghanistan or Iraq if it is—

18 (A) mined, produced, or manufactured in Afghanistan or Iraq; or

19 (B) substantially transformed in Afghanistan or Iraq into a new and
20 different article of commerce, with a name, character, or use distinct from the
21 original article.

1 (2) A construction material is from Afghanistan or Iraq if it is—

2 (A) mined, produced, or manufactured in Afghanistan or Iraq; or

3 (B) substantially transformed in Afghanistan or Iraq into a new and
4 different article of commerce, with a name, character, or use distinct from the
5 original article.

6 (3) A service is from Afghanistan or Iraq if it is provided—

7 (A) by citizens or legal resident aliens of Afghanistan or Iraq; or

8 (B) by a facility, producer, manufacturer, or other supplier established in
9 Afghanistan or Iraq.

10 (4) A facility, producer, manufacturer, or other supplier is established in

11 Afghanistan or Iraq if it meets criteria prescribed by the Secretary of Defense.

Section-by-Section Analysis

This section would support the President's National Strategy for Victory in Iraq and the U.S. Operational Commander's campaign plan for creating a moderate, stable, and representative Afghanistan and Iraq capable of controlling and governing its respective territory. Specifically, this section would authorize the Department of Defense to purchase products, construction materials, or services from Afghanistan or Iraq in support of military operations or stability operations in Afghanistan or Iraq. The goal is to award contracts that provide meaningful opportunities for economic development and expansion for business concerns in Afghanistan and Iraq as well as entrepreneurship, employment, and skills training for Afghanis and Iraqis.

According to General David H. Petraeus, "Empowering Iraqis to do the job themselves has, in fact, become the essence of our strategy -- and such an approach is particularly applicable in Iraq. Despite suffering for decades under Saddam, Iraq still has considerable human capital, with the remnants of an educated middle class, a number of budding entrepreneurs, and many talented leaders." Indeed, our military commanders have identified unemployment (between 25 and 60 percent in Iraq, and 40 percent in Afghanistan) as a major concern that directly affects the security situation because the pool of unemployed locals is available for recruitment by either militias or insurgents.

**SEC. ____ . EXPANSION AND EXTENSION OF AUTHORITY TO PROVIDE
ADDITIONAL SUPPORT FOR COUNTER-DRUG ACTIVITIES OF
CERTAIN FOREIGN GOVERNMENTS.**

1 (a) EXTENSION OF AUTHORITY.—Paragraph (2) of section 1033(a) of the National
2 Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85; 111 Stat. 1881), as
3 amended by section 1021 of the National Defense Authorization Act for Fiscal Year 2004
4 (Public Law 108-136; 117 Stat. 1593) and section 1022 of the John Warner National Defense
5 Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2382), is further
6 amended by striking "September 30, 2008" and inserting "September 30, 2011".

7 (b) ADDITIONAL GOVERNMENTS ELIGIBLE TO RECEIVE SUPPORT.—Subsection (b) of such
8 section is amended by adding at the end the following new paragraphs:

9 "(17) The Government of Niger.

10 "(18) The Government of Mauritania.

11 "(19) The Government of Mali.

12 "(20) The Government of Chad.

13 "(21) The Government of Indonesia.

14 "(22) The Government of Philippines.

15 "(23) The Government of Thailand.

16 "(24) The Government of Malaysia.

17 "(25) The Government of Honduras.

18 "(26) The Government of the Dominican Republic.

19 "(27) The Government of Mexico."

20 (c) TYPES OF SUPPORT.—Subsection (c) of such section is amended—

1 (1) in paragraph (2), by striking ", subject to section 484(a) of the Foreign
2 Assistance Act of 1961 (22 U.S. C. 2291c(a)),"; and

3 (2) in paragraph (5), by striking "For the Government of Afghanistan only,
4 individual" and inserting "Individual".

5 (d) MAXIMUM ANNUAL AMOUNT OF SUPPORT.—Subsection (e)(2) of such section is
6 amended by striking "\$60,000,000 during either of the fiscal years 2007 and 2008" and inserting
7 "\$80,000,000 during any of the fiscal years 2008 through 2011".

Section-by-Section Analysis

This section would extend current authority to the same year of expiration as the other counter-drug authorities. This section also would expand the nature of support to include additional types of equipment and supplies that are essential for conducting counter-drug missions and that would sustain and reinforce previously provided training and other support. These additional provisions would enable Department of Defense (DoD)-supported countries to successfully engage drug traffickers.

Current law authorizes the DoD to provide specific types of support not to exceed \$60 million during either of the fiscal years 2007 and 2008. Over the past few years this authorization enabled the DoD to successfully support interdiction efforts in Colombia and Peru and to bolster nascent security efforts in Afghanistan. This section would increase the DoD's funding to accommodate Afghanistan's acute requirements for equipment and maintenance and add eleven countries to the list of countries eligible for support. These countries are situated either along key drug smuggling routes or are facing an increasing threat of narcoterrorism. Enhanced interdiction capabilities for the countries listed in this legislation are critical to U.S. efforts to stem the flow of illicit drugs and to reduce the threat of narcoterrorism to struggling democracies.