SEC. ___. CONTRACT CLOSEOUT AUTHORITY.

(a) Notwithstanding any other provision of law or regulation, the Secretary of Defense may close out a contract or group of contracts as described in subsection (b) through the issuance of one or more modifications to existing Department of Defense contracts without completing a reconciliation audit or other corrective action as more specifically described in subsection (c) and the regulations promulgated by the Secretary pursuant to subsection (f). To accomplish closeout of such contracts—

(1) remaining contract balances may be offset with balances in other contract line items within a contract regardless of the year or type of appropriation previously or currently obligated to fund each contract line item and regardless of whether either appropriation has closed; and

(2) remaining contract balances may be offset with balances on other contracts regardless of the year or type of appropriation previously or currently obligated to fund each contract and regardless of whether either appropriation has closed;

(b) Contracts covered by this section are contracts or a group of contracts between the Department of Defense and a defense contractor that —

(1) were entered into prior to fiscal year 2000;

(2) have no further supplies or services deliverables due under the terms and conditions of the contract; and

(3) are determined by the Secretary of Defense to be not otherwise reconcilable because—

(i) the records have been destroyed or lost; or

(ii) the records are available but the Secretary of Defense has determined that the time or effort required to determine the exact amount owed to the

government or amount owed to the contractor is disproportionate to the amount at issue.

(c) Any contract or contracts covered by this section may be closed out through a negotiated settlement with the contractor.

(d) In any case where this authority is exercised, the cognizant payment or accounting offices may adjust and close any open finance and accounting records.

(e) No liability will attach to any accounting, certifying, or payment official or contracting officer for any adjustments or closeout made pursuant to this authority.

(f) The Secretary of Defense shall prescribe regulations for the administration of the authority under this section.

Section-by-Section Analysis

This proposal 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.