SEC. ___. REPEAL OF PROHIBITION ON PERFORMANCE OF NON-DEFENSE AUDITS BY DEFENSE CONTRACT AUDIT AGENCY.

Section 893 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 129 Stat. 952) is amended by striking subsections (a) and (d).

Section-by-Section Analysis

This proposal would repeal subsections (a) and (d) of section 893 of the Fiscal Year (FY) 2016 National Defense Authorization Act (NDAA) (Public Law 114-92) to allow the Defense Contract Audit Agency (DCAA) the ability to perform audits for non-Defense Agencies without a reduction in the appropriated funding for the Agency.

The current language will not meet the intent of the law which is to reduce DCAA's incurred cost backlog. The implementation of subsections (a)(1) and (a)(2) is having a significant negative impact on DCAA's efforts in eliminating its incurred cost backlog, the Department of Defense (DoD) Contract Closeout Initiatives, and industry. As a result of the law, DCAA was forced to implement a hiring freeze and expects to reduce its workforce by approximately 400 employees due to the reimbursable funding that DCAA no longer receives from non-Defense Agencies (approximately $50 million).This reduction in workforce will increase the time it will take for DCAA to eliminate the incurred cost backlog by a year. The law will also cause contractors servicing multiple Government Agencies to be subjected to duplicative audits from each Agency because DCAA is no longer able to audit direct costs of non-Defense agencies.

DoD is the Cognizant Federal Agency at many DoD contractors where non-Defense Agencies also have contracts, and DCAA is the responsible Government audit agency. Therefore, DCAA is still required to perform audits at these companies that have both DoD and non-Defense Agency work, but will have to do so with fewer resources because the non-Defense Agencies will not be funding their portion of the work. The Federal Acquisition Regulations require agencies to avoid duplicative audits. However, under the provisions of section 893, the non-Defense agencies will have to pay Independent Public Accountants to perform separate audits on the direct costs for their contracts, thus resulting in inefficiencies for industry having to support multiple groups of auditors, and increasing the costs to the Government for paying the outside auditors. By not permitting DCAA to audit the costs incurred on non-Defense contracts, section 893, subsections (a)(1) and (a)(2), introduced inefficiencies into the acquisition process that would not exist if DCAA were permitted to perform a single audit.

The intent of these subsections was for DCAA to continue to reduce the DoD incurred cost backlog. However, the effect of these subsections will actually result in a slower reduction of the DoD backlog due to the loss of resources that were performing work that supported both DoD and non-Defense Agencies. Barring unforeseen circumstances, DCAA anticipated its incurred cost backlog would be eliminated by the end of FY 2017 as it has made significant strides in reducing the incurred cost backlog over the past several year (over 21,000 years in

2011 to just over 7,000 years now). With the loss of resources due to the lack of reimbursable funding, we are now anticipating the backlog will remain until the end of FY 2018. DCAA anticipates the reduction in workforce will result in 300 fewer incurred cost audits for DoD being performed during FY 2016. The outcome is the opposite of the intent; therefore, we recommend rescinding these two sections and allowing DCAA to perform work for our reimbursable customers.

Budget Implications: This proposal has several budget implications. If not enacted, the proposal will result in cost increases for non-DoD agencies due to the need to contract with more costly independent public accounting firms. In addition, the inefficiencies of having several auditors will slow down the progress for reducing the incurred cost backlog resulting in increased costs to the Government as a whole. The table below details resource requirements associated with this proposal. The resources reflected in the table below are best estimates of the implications to non-DoD agencies budgets.

INCREASE IN RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	$6.16	$6.26	$6.36	$6.47	$6.60	National Aeronautics and Space Administration			
	$5.08	$5.16	$5.24	$5.33	$5.44	Department of Energy			
	$2.41	$2.45	$2.49	$2.53	$2.59	USAID			
	$2.27	$2.31	$2.35	$2.39	$2.44	Department of State			
	$1.63	$1.66	$1.69	$1.72	$1.75	Health and Human Services			
	$2.45	$2.48	$2.52	$2.57	$2.61	Others			
Total	$20.00	$20.32	$20.65	$21.01	$21.43				

If the proposal is not enacted, the non-DoD agencies will be required to contract with Independent Public Accountants (IPAs) to perform the work in lieu of DCAA. We estimate this will cost the non-DoD agencies as much as $20 million more than if DCAA was to perform the work. This does not include an estimate for the inefficiencies by having more than one audit team to perform the complete contract audit.

Additionally, if this proposal is not enacted the Government will continue to experience audit inefficiencies resulting in a slower progress in eliminating the incurred cost backlog and increased costs to the Government. The larger the incurred cost backlog the more costly it is to the Government and Industry. The current NDAA language has a negative impact in accomplishing the backlog. We anticipate it will delay eliminating the backlog by at least a year.

Changes to Existing Law: This proposal would amend section 893 of the National Defense Authorization Act for Fiscal Year 2016, as follows (text to be deleted is ~~struck through~~):

SEC. 893. IMPROVED AUDITING OF CONTRACTS.

~~(a) PROHIBITION ON PERFORMANCE OF NON-DEFENSE AUDITS BY DCAA.—~~

~~(1) IN GENERAL.—Effective on the date of the enactment of this Act, the Defense Contract Audit Agency may not provide audit support for non-Defense Agencies unless the Secretary of Defense certifies that the backlog for incurred cost audits is less than 18 months of incurred cost inventory.~~

~~(2) ADJUSTMENT IN FUNDING FOR REIMBURSEMENTS FROM NON-DEFENSE AGENCIES.—The amount appropriated and otherwise available to the Defense Contract Audit Agency for a fiscal year beginning after September 30, 2016, shall be reduced by an amount equivalent to any reimbursements received by the Agency from non-Defense Agencies for audit support provided.~~

(b) AMENDMENTS TO DEFENSE CONTRACT AUDIT AGENCY ANNUAL REPORT.—Section 2313a(a) of title 10, United States Code, is amended—

(1) in paragraph (2), by amending subparagraph (D) to read as follows:

"(D) the total costs of sustained or recovered costs both as a total number and as a percentage of questioned costs; and";

(2) in paragraph (3), by striking "; and" and inserting a semicolon;

(3) by redesignating paragraph (4) as paragraph (5); and

(4) by inserting after paragraph (3) the following new paragraph:

"(4) a description of outreach actions toward industry to promote more effective use of audit resources; and".

(c) REVIEW OF ACQUISITION OVERSIGHT AND AUDITS.—

(1) REVIEW REQUIRED.—The Secretary of Defense shall review the oversight and audit structure of the Department of Defense with the goals of—

(A) enhancing the productivity of oversight and program and contract auditing to avoid duplicative audits; and

(B) streamlining of oversight reviews.

(2) RECOMMENDATIONS.—The Secretary shall ensure streamlined oversight reviews and avoidance of duplicative audits and make recommendations in the report required under paragraph (3) for any necessary changes in law.

(3) REPORT.—

(A) Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on actions taken to avoid duplicative audits and streamline oversight reviews.

(B) The report required under this paragraph shall include the following elements:

(i) A description of actions taken to avoid duplicative audits and streamline oversight reviews based on the review conducted under paragraph (1).

(ii) A comparison of commercial industry accounting practices, including requirements under the Sarbanes-Oxley Act of 2002 (Public Law 107-204; 15 U.S.C. 7201 et seq.), with the cost accounting standards prescribed under chapter 15 of title 41, United States Code, to determine if some portions of cost accounting standards compliance can be met through such practices or requirements.

(iii) A description of standards of materiality used by the Defense Contract Audit Agency and the Inspector General of the Department of Defense for defense contract audits.

(iv) An estimate of average delay and range of delays in contract awards due to the time necessary for the Defense Contract Audit Agency to complete pre-award audits.

(v) The total costs of sustained or recovered costs both as a total number and as a percentage of questioned costs.

~~(d) INCURRED COST INVENTORY DEFINED.—In this section, the term "incurred cost inventory" means the level of contractor incurred cost proposals in inventory from prior fiscal years that are currently being audited by the Defense Contract Audit Agency.~~