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GENERAL COUNSEL

JUN 24 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,

A handwritten signature in cursive script that reads "D.J. Dell'Orto".

Daniel J. Dell'Orto
Acting

Enclosure:
As stated





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JUN 24 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.

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.

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**SEC. ____ . AUTHORITY FOR THE DEPARTMENT OF DEFENSE TO
APPROVE AN ALTERNATE METHOD OF PROCESSING EQUAL
EMPLOYMENT OPPORTUNITY COMPLAINTS WITHIN ONE OR
MORE COMPONENT ORGANIZATIONS UNDER SPECIFIED
CIRCUMSTANCES.**

1 (a) AUTHORITY.—The Department of Defense may implement within one or more of its
2 Component organizations an alternate program for processing equal employment opportunity
3 complaints. The Equal Employment Opportunity Commission shall not reverse a Component
4 organization's final decision on the grounds that the organization did not comply with the
5 regulatory requirements promulgated by the Commission provided that complainants—

6 (1) participate voluntarily and retain the right to use the procedural requirements
7 of part 1614 of title 29 of the Code of Federal Regulations or other regulations,
8 directives, or regulatory restrictions prescribed by the Equal Employment Opportunity
9 Commission;

10 (2) may opt out of the alternate system at any time prior to the issuance of the
11 agency's final decision; and

12 (3) retain any statutory or regulatory right to appeal the Component organization's
13 final decision to the Equal Employment Opportunity Commission or to file suit in
14 Federal district court.

15 If the Equal Employment Opportunity Commission reverses a final decision on other grounds,
16 the Commission may remand the case to either the process under part 1614 of title 29 of the
17 Code of Federal Regulations or the alternate program as it deems appropriate.

18 (b) AIR FORCE PROGRAM.—The Secretary of the Air Force may implement the alternate

1 program to process equal employment opportunity complaints that it previously conducted as a
2 Department of Defense pilot program under the authority of section 1111 of the Floyd D. Spence
3 National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398; 114 Stat.
4 1654A-312), provided that it complies with the requirement and restrictions in subsection (a).
5 The Secretary may delete its pilot program evaluation reporting and surveys.

6 (c) APPEALS.—A complainant's election to use an alternate process authorized as
7 provided in subsections (a) and (b) shall not obstruct, impede, or otherwise interfere with any
8 statutory or regulatory right of the complainant to appeal the Component organization's final
9 decision to the Equal Employment Opportunity Commission or to file suit in federal district
10 court.

11 (d) DURATION.—The authority granted under this section shall expire two years after the
12 date of enactment unless the Equal Employment Opportunity Commission agrees to an extension
13 of the program.

Section-by-Section Analysis

This section would extend the Department of Defense's pilot program to streamline the processing of equal employment opportunity complaints.

Section 1111 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year (FY) 2001 (Public Law 106-398) required the Department of Defense (DoD) to implement three pilot programs to streamline the processing of EEO complaints. The programs were authorized for a three-year period from the date of commencement. The law required the then-General Accounting Office (GAO), now the Government Accountability Office, to study and report to Congress on the results of the pilot program during, and at the conclusion of, the program. The law specifically allowed deviations from EEOC-promulgated regulations, which otherwise must be followed since they are considered to have the force of law.

The Air Force pilot program stressed the aggressive and early use of alternate dispute resolution and deviated from EEOC regulations by consolidating the investigative and hearing phases into a single stage using a Fact Finding Conference (FFC). The agency set a goal of 127 days to reach a final decision, as compared to the 400 days allowed in the traditional (CFR 1614) system. Agency data (which will be validated and included in the final GAO report due in December 2007) indicated significantly reduced processing times for cases processed in this

program. Specifically, through the first two-and-one-half years of the pilot program, there was an approximately 35 percent reduction in the number of calendar days to complaint closure. The process also reduces duplication of effort and develops a record nearly as complete as that produced by an administrative judge presiding over a hearing, with less waiting time and fewer resources. Moreover, it has been shown that resolving complaints when the facts are fresh in witnesses' minds is a plus and there is a definite benefit to morale from getting issues addressed so that the members involved in the situation can return to focusing on the mission. In addition, allegations against senior Air Force leaders are resolved more expeditiously so that appropriate assignment, award and promotion decisions can be made, not delayed.

The legislative authority to deviate from EEOC regulations will expire on October 1, 2007. One obvious course of action would be to discontinue the pilot program and await the GAO report and congressional and/or EEOC action. Should the EEOC take all or part of the pilot program's consolidation approach, it would have to draft implementing regulations; place them in the Federal Register; and invite and consider public comment before amending its complainant processing regulations. The Department of Defense estimates that it would take two years to accomplish this. Such a time-consuming course of action is warranted if the current regulations are replaced, but it would be onerous for offering an alternative to the current system.

This section would ensure that Department of Defense components could use an alternative system with safeguards (including appeals to EEOC for all agency decisions) beginning in FY 2009, but only as a supplement to the traditional system and, even then, only on a voluntary basis on the complainant's part. The complainant also has the right to opt out and return to the traditional (1614) system any time before a department's final agency decision. Although some would argue that such a legislatively-based exception invades the province of the EEOC, it is a sound, common sense, business-like decision that makes available a proven alternative with advantages for the agency and the complainant.

Cost Implications: The alternative program uses the same or similar agency funds dedicated to processing the traditional EEO complaints. In fact, many cases in the pilot program save funds through their early resolution and cost avoidance (for EEO hearings).

**SEC. __. EXPEDITED HIRING AUTHORITY FOR DEFENSE ACQUISITION
POSITIONS.**

1 (a) IN GENERAL.—(1) For purposes of sections 3304, 5333, and 5753 of title 5, United
2 States Code, the Secretary of Defense may determine, under regulations prescribed by the Office
3 of Personnel Management, that certain Federal acquisition positions as described in paragraph
4 (2) are shortage category positions in order to use the authorities in those sections to recruit and
5 appoint highly qualified persons directly to such positions in the Department.

6 (2) Federal acquisition positions covered by this section include—

7 (A) all positions in Series 1102, Contracting;

8 (B) all positions in the Series 1105, Purchasing; and

9 (C) positions in other series in which significant acquisition-related functions are
10 performed.

11 (b) SUNSET.—The Secretary may not appoint a person to a position of employment under
12 this section after September 30, 2012.

Section-by-Section Analysis

This section would give the Secretary of Defense the ability to expedite the hiring process for certain DoD acquisition positions and addresses the requirements of section 854 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364), Joint Policies on Requirements Definition, Contingency Program Management, and Contingency Contracting.

In addition, the Department of Defense (DoD) has established policy to enhance efforts to integrate, synchronize, and become more effective and responsive to the war fighter. For example, the contingency contracting mission of the Joint Contracting Command – Iraq/Afghanistan (JCC-I/A) has been significantly expanded. This increase requires the JCC-I/A to have contract management and oversight of all DoD contracts in Iraq and Afghanistan. The increased mission requirements of the JCC-I/A and the Defense Contract Management Agency will require an immediate infusion of approximately 250 additional acquisition personnel into theater with a corresponding increase of acquisition personnel in the United States. This population of acquisition specialists will serve as a future rotational force, as required, sustaining

an appropriate level of acquisition oversight during contingency operations. The Army estimates the need for an immediate increase of 1,000 civilian contracting professionals.

This section is consistent with recommendations advocated by the Key Elements for Future Success as recently reported by the Commission on Army Acquisition and Program Management in Expeditionary Operations that was chaired by the Honorable Jacques Gansler, and it is consistent with the objectives of section 849(b) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181).

Cost Implications: Positions and dollars associated with the salary for these positions have been budgeted.

**SEC. ____ . OPTIONAL LIFE INSURANCE ELECTION OPPORTUNITY FOR
CERTAIN FEDERAL CIVILIAN EMPLOYEES.**

1 (a) AUTOMATIC COVERAGE.—Section 8702(c) of title 5, United States Code, is
2 amended—

3 (1) by inserting "any employee who is deployed in support of a military
4 contingency operation as defined in section 101(a)(13) of title 10, or" after "subsection
5 (b)"; and

6 (2) by inserting "notification of deployment or" after "the date of the".

7 (b) OPTIONAL INSURANCE.—Section 8714a(b) of such title is amended—

8 (1) by inserting "(2)" after "(b)"; and

9 (2) by inserting before paragraph (2) the following new paragraph (1):

10 "(1) Any employee who is deployed in support of a military contingency
11 operation as defined in section 101(a)(13) of title 10, or an employee of the Department
12 of Defense who is designated as emergency essential under section 1580 of title 10, shall
13 be insured if the employee, within 60 days after the date of notification of deployment or
14 designation, elects to be insured under a policy of insurance under this chapter. An
15 election under the preceding sentence shall be effective when provided to the Office in
16 writing, in the form prescribed by the Office, within such 60-day period."

17 (c) ADDITIONAL OPTIONAL LIFE INSURANCE.—Section 8714b(b) of such title is
18 amended—

19 (1) by inserting "(2)" after "(b)"; and

20 (2) by inserting before paragraph (2) the following new paragraph (1):

1 "(1) Any employee who is deployed in support of a military contingency
2 operation as defined in section 101(a)(13) of title 10, or an employee of the Department
3 of Defense who is designated as emergency essential under section 1580 of title 10, or,
4 shall be insured if the employee, within 60 days after the date of notification of
5 deployment or designation, elects to be insured under a policy of insurance under this
6 chapter. An election under the preceding sentence shall be effective when provided to
7 the Office in writing, in the form prescribed by the Office, within such 60-day period."

Section-by-Section Analysis

This proposal would allow civilian employees to purchase additional life insurance when they are deployed in support of contingency operations. Federal employees serving in support of military contingency operations could elect basic Federal Employees' Group Life Insurance (FEGLI) coverage. It also would allow newly-designated emergency essential employees of the Department of Defense and any Federal employees who are being deployed the right to obtain Option A (standard option) coverage, or obtain or increase Option B (additional) coverage, within 60 days of deployment. During the Global War on Terror, the Department of Defense's (DoD's) civilian workforce will become more involved in contingency and emergency operations and, thus, placed in harm's way.

These operations are increasingly relying on the interagency partnerships for their success, as evidenced by interagency participation in reconstruction and stabilization efforts in Iraq and Afghanistan. Allowing Federal employees deployed in support of contingency operations to obtain additional life insurance would provide an incentive to recruit and retain these employees. These changes also would create greater equity between military and civilian benefits.

Active duty members and members of the Ready Reserve may elect Servicemembers' Group Life Insurance (SGLI) coverage of up to \$400,000. By comparison, FEGLI basic coverage is limited to the employee's salary rounded up to the next \$1,000, plus an additional \$2,000. To obtain life insurance coverage on par with that of servicemembers, civilian employees must elect optional FEGLI coverage. Servicemembers who have previously declined SGLI may enroll at any time by completing a "Request for Insurance" form that is certified by their commanding officer. Using the same process, servicemembers may increase their SGLI coverage at any time.

In contrast, Federal civilian employees can only request FEGLI enrollment or increase existing coverage if they experience a qualifying "life event" (e.g., marriage, divorce, death of spouse, or acquiring an eligible child), or during an open season. Enrolling or increasing coverage due to a life event or during an open season does not require the employee to first

obtain a physical. Deployment is not considered a qualifying "life event", and open seasons are extremely rare (unlike the annual Federal Employees Health Benefits open season periods). Absent a qualifying "life event" or an open season, Federal employees who have waived FEGLI coverage may request coverage when at least one year has passed since the effective date of their most recent waiver. They must also obtain a physical examination, and submit the documentation to the Office of Federal Employees' Group Life Insurance (OFEGLI) for determination and await a decision. Obtaining a physical, submitting the required forms, and receiving a determination from OFEGLI realistically takes months.

Roughly 35 percent of DoD emergency essential employees have only basic FEGLI coverage. These employees constitute only a small proportion of DoD's 700,000 civilian employees. Only about 5 percent of DoD emergency essential employees have no FEGLI coverage at all. Employees with basic FEGLI coverage typically have only about 20 percent of the life insurance coverage of their uniformed servicemember counterparts.

DoD is concerned about its emergency essential employees, as well as other DoD and Federal employees who deploy in support of contingency operations. These employees will have to rely on FEGLI since private-sector life insurance typically precludes the payment of life insurance policies when the insured is killed or dismembered in a combat zone. By contrast, FEGLI will typically provide coverage to deployed civilians in the event of dismemberment or death in a combat zone as long as the insured is not directly engaged in combat.

Currently, section 8702(c) of title 5, United States Code, permits a DoD emergency essential employee to elect basic coverage under FEGLI within 60 days of the designation, even if the employee previously waived coverage. This proposed section would allow any employee who receives notification of deployment in support of a military contingency operation to elect basic coverage. This change would make basic FEGLI coverage available to any deploying civilian who desires it, regardless of whether the employee was designated emergency essential. The proposal would effectively treat deployment as a qualifying "life event" for the purpose of electing basic FEGLI coverage.

This proposed section also would amend sections 8714a and 8714b of title 5, United States Code, to permit newly-designated DoD emergency essential employees and any other DoD or Federal employees who are being deployed eligibility to obtain Option A (standard option) coverage, or obtain or increase Option B (additional) coverage, within 60 days of deployment or, if deployed on or before the effective date of this section, within 60 days of its effective date. Currently, neither an employee who is designated as emergency essential nor an employee who is deploying in a contingency operation has the ability to elect Option A (standard option) coverage or Option B (additional) coverage. The proposal would effectively treat deployment as a qualifying "life event" for the purpose of electing additional FEGLI coverage.

This proposal is consistent with recommendations advocated by the Key Elements for Future Success as recently reported by the Commission on Army Acquisition and Program Management in Expeditionary Operations that was chaired by the Honorable Jacques Gansler, and it is consistent with the objectives of section 849(b) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181).

NUMBER OF PERSONNEL AFFECTED

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
DoD-wide (basic election)	275	275	275	275	275
DoD-wide (optional election)	1925	1925	1925	1925	1925
DoD-wide TOTAL	2200	2200	2200	2200	2200

RESOURCE REQUIREMENTS (\$MILLIONS)

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
DoD-wide	.0410	.0423	.0438	.0452	.0468

COST METHODOLOGY

The DoD estimates that the cost of this section would be minimal. Most employees already have basic life insurance (the employee pays 2/3 of the cost and the agency pays 1/3 of the cost). The cost for basic insurance is currently \$0.15 biweekly per \$1,000 and is based on the employee's basic salary. Approximately 5 percent of DoD's emergency essential employees have waived the basic FEGLI coverage. Approximately 35 percent of DoD's emergency essential employees have not elected optional insurance coverage. **Employees** pay the full cost of any additional insurance (Options A and B coverage) and such elections are of **no cost** to the Department. The benefits to the Federal government and the DoD of enacting this section would far out-weigh any minimal costs associated with it. Using an average annual salary of \$75,000, the cost of the employer portion of the basic FEGLI premiums would be about \$150 per year per employee. DoD records indicate approximately 5,200 DoD civilian employees are deployed worldwide in support of military operations. By extrapolating to account for mission requirements, if 5,500 employees were deployed and 5 percent did not have basic life insurance, the cost to the DoD would be about \$41,000 per year. Projected resource requirements for out-years (2010-2013) are adjusted by 3.2 percent for FY 2010, and 3.4 percent for every year thereafter, in accordance with OMB guidance for increases in pay.