SEC. 1218. AUTHORITY TO TRANSFER EXCESS DEFENSE ARTICLES AND SERVICES TO THE MILITARY AND SECURITY FORCES OF FOREIGN COUNTRIES AND TO TRANSFER CONSTRUCTION EQUIPMENT TO THE GOVERNMENT OF AFGHANISTAN.

(a) AUTHORITY TO TRANSFER WITHOUT REIMBURSEMENT.—

(1) AUTHORITY TO TRANSFER EXCESS DEFENSE ARTICLES.—The Secretary of Defense may, without reimbursement from the government of the recipient country, transfer excess defense articles from the stocks of the Department of Defense to a foreign country to enhance the capabilities of the military and security forces of that country and as provided in subsection (i).

(2) AUTHORITY TO PROVIDE DEFENSE SERVICES.—The Secretary may, without reimbursement from the government of the recipient country, provide defense services—

(A) in connection with the transfer of excess defense articles under paragraph (1); and

(B) in connection with the transfer under chapter 7 of title 40, United States Code, for the purpose stated in paragraph (1) of personal property that is foreign excess property for purposes of such chapter and is categorized under regulations of the Department of Defense as foreign excess personal property.

(3) CONCURRENCE OF SECRETARY OF STATE REQUIRED.—Any transfer of excess defense articles under paragraph (1) or provision of defense services under paragraph (2) may be made only with the concurrence of the Secretary of State. The Secretary of Defense and the Secretary of State shall jointly formulate the procedures concerning selection of recipient countries and types of articles and services to be provided. The

Secretary of Defense shall coordinate with the Secretary of State in the implementation of oversight mechanisms for articles and services provided under this section.

(b) LIMITATIONS.—

(1) SOURCE OF TRANSFERRED EXCESS DEFENSE ARTICLES.—The authority provided under subsection (a) to transfer excess defense articles may only be used for excess defense articles that—

(A) were used in support of United States operations in Iraq or Afghanistan;

(B) are no longer required by United States forces in Iraq, Afghanistan, or Kuwait; and

(C) as of the date of the enactment of this Act are located in the area of responsibility of the United States Central Command.

(2) VALUE.—The aggregate replacement value of all excess defense articles transferred and defense services provided under subsection (a) may not exceed $750,000,000.

(c) APPLICABLE LAW.—Any excess defense article transferred or defense service provided to a foreign country under the authority provided under subsection (a) (except defense services provided under subparagraph (a)(2)(B)) shall be subject to the authorities and limitations applicable to excess defense articles under sections 502, 505, and 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2302, 2314, 2321j), other than the authorities and limitations contained in subsections (b)(1)(B), (e), (f), and (g) of section 516.

(d) NOTIFICATION.—

(1) IN GENERAL.—The Secretary of Defense may not transfer excess defense

articles or provide defense services under subsection (a) until 15 days after the date on which the Secretary has provided notice of the proposed transfer to the appropriate congressional committees. Any such notification may be provided only with the concurrence of the Secretary of State.

(2) CONTENTS.—Any notification under paragraph (1) shall include the following:

(A) A description of the amount and type of each excess defense article to be transferred or defense services to be provided.

(B) A statement describing the current value of such excess defense article and the estimated replacement value of such excess defense article.

(C) Identification of the military department from which the excess defense articles being transferred are drawn.

(D) Identification of the recipient country and the element of its military or security force (or, for transfers authorized under subsection (i), the element of the Government of Afghanistan) that is the proposed recipient of each excess defense article to be transferred or defense service to be provided.

(E) A certification and determination by the Secretary of Defense, with the concurrence of the Secretary of State, that—

(i) the excess defense articles to be transferred are required by the military or security forces of the recipient country (or, for transfers under subsection (i), the Government of Afghanistan) to build their capacity to maintain peace and security in their country;

(ii) the government of the recipient country has agreed to accept and take possession of the excess defense articles to be transferred and to

receive the defense services to be provided; and

(iii) the proposed transfer of excess defense articles or the provision of defense services in connection with such transfer is in the national interest of the United States.

(F) A description of the process by which potential requirements, including requirements related to responding to natural disasters and other domestic emergencies in the continental United States, for excess defense articles to be transferred under the authority provided in subsection (a) ar**e** identified and the mechanism for resolving any potential conflicting requirements for such excess defense articles.

(G) An assessment of the ability of the recipient country to absorb the costs associated with possessing and maintaining the excess defense articles to be transferred.

(e) QUARTERLY REPORT.—

(1) IN GENERAL.—At the end of each calendar quarter through March 31, 2016, in which the authority provided under subsection (a) is implemented, the Secretary of Defense shall submit to the appropriate congressional committees a report on the implementation of the authority provided under subsection (a). The report shall include the replacement value of excess defense articles transferred pursuant to subsection (a) (shown both in the aggregate and by military department) and services provided to recipient foreign countries during the previous 90 days, as well as the cumulative total replacement value of all articles transferred and services provided under subsection (a) from the date of the enactment of this Act through the end of the quarter covered by the

report.

(2) INCLUSION IN OTHER REPORT.—The report required under paragraph (1) for any quarter may be included in the report required under section 9204 of the Supplemental Appropriations Act, 2008 (Public Law 110-252; 122 Stat. 2410), or any follow on report to such other report.

(f) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means—

(A) the Committee on Appropriations, the Committee on Armed Services, and the Committee on Foreign Affairs of the House of Representatives; and

(B) the Committee on Appropriations, the Committee on Armed Services, and the Committee on Foreign Relations of the Senate.

(2) DEFENSE ARTICLES.—The term "defense articles" has the meaning given that term in section 644(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2403(d)).

(3) DEFENSE SERVICES.—The term "defense services" has the meaning given that term in section 644(f) of such Act (22 U.S.C. 2403(f)).

(4) EXCESS DEFENSE ARTICLE.—The term "excess defense article" has the meaning given that term in section 644(g) of such Act (22 U.S.C. 2403(g)), except as otherwise provided in subsection (i).

(5) MILITARY AND SECURITY FORCES.—The term "military and security forces" means national armies, national air forces, national navies, national guard forces, police forces, and border security forces, and other national security forces that conduct border and maritime security and internal defense, but does not include non-governmental or

irregular forces (such as private militias).

(g) EXPIRATION.—The authority provided under subsection (a) may not be exercised after September 30, 2014.

(h) EXCESS DEFENSE ARTICLES.—

(1) ADDITIONAL AUTHORITY.—The authority provided under subsection (a) is in addition to the authority provided by section 516 of the Foreign Assistance Act of 1961.

(2) AGGREGATE VALUE.—The value of excess defense articles transferred under this section shall not be counted against the limitation on the aggregate value of excess defense articles contained in section 516(g) of the Foreign Assistance Act of 1961. The value of excess defense articles transferred pursuant to section 516 of the Foreign Assistance Act of 1961 shall not be counted against the limitation in subsection (b)(2) of this section.

(i) CONSTRUCTION EQUIPMENT.—Notwithstanding section 644(g) of the Foreign Assistance Act of 1961 (22 U.S.C. 2403(g)) and section 2562 of title 10, United States Code, construction equipment from the stocks of the Department of Defense may be transferred, using the authority provided under subsection (a), as a defense article to the Government of Afghanistan.

Section-by-Section Analysis

This proposal would establish a new authority similar to section 1234 of the National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84) that was designed to provide the Department of Defense (DoD), with Department of State concurrence, the authority to transfer excess defense articles and provide defense services to the military and security forces of Iraq and Afghanistan. The authority under Section 1234, which expires on December 31, 2012, was used successfully to equip the Iraqi Security Forces. This proposal builds on a request received from the Commander, United States Central Command (USCENTCOM), that the Secretary of Defense and Chairman of the Joint Chiefs of Staff support "changes to authorities currently written or new legislation to permit transfer of excess operational stocks to meet long-term security assistance objectives." In response to this request, the Office of the Under Secretary of

Defense for Acquisition, Technology, and Logistics, with the assistance of the Joint Staff J-4, established a Cross Functional Team that included representatives from the Office of the Secretary of Defense, the Joint Staff Directorates, the military departments, interested Defense Agencies, USCENTCOM, and the Department of State to develop this legislative proposal. While there are authorities under title 22 of the United States Code that support the Nation's foreign security objectives, the current authorities are not flexible enough to meet the request of the Commander, USCENTCOM.

This proposal would provide DoD, with Department of State concurrence, a time-limited authority to transfer excess defense articles and provide defense services without reimbursement from recipient countries to enhance the capabilities of the military and security forces of those countries. This authority would allow DoD to transfer excess defense articles to countries outside of Afghanistan, assisting the Commander, USCENTCOM to meet long-term security cooperation objectives. This proposal would also authorize the Secretary of Defense to provide services (including transportation) in connection with the transfer of such excess defense articles and the transfer of foreign excess personal property (FEPP) to the countries where it makes financial sense to do so, rather than ship items to the United States. Should this authority be granted, the Cross Functional Team with key individuals from Department of State and DoD would oversee the execution of all requests to transfer equipment to key partner nations, ensuring they meet the needs across the Interagency, particularly the Department of State.

The proposal would not increase the budget; similar to Section 1234, this proposal would limit the aggregate value of excess defense articles transferred, and defense services provided, to $750 million**.** Excess defense articles that would be available for transfer under this proposal would be limited to those used in support of United States operations in Iraq or Afghanistan that are no longer required by United States forces in Iraq, Afghanistan, or Kuwait, and -- as of the date of the enactment of the proposal -- are located in the area of responsibility of USCENTCOM. The intent of this portion of the proposal is to focus any transfer of excess defense articles to countries that contributed to the Northern Distribution Network and facilitate the United States' continued retrograde of equipment from Afghanistan. Although the Foreign Assistance Act of 1961 (Section 516) provides DoD with an authority similar to the intent of this proposal, it does not authorize DoD to expend any funds to facilitate the transfer of excess defense articles. This proposal would provide DoD the authority to provide transportation, maintenance services, etc. in connection with the transfer of excess defense articles and FEPP.

In summary this proposal provides flexibility to the whole-of-government (DoD and State) approach to building the partner capacity of national security forces. The proposal would authorize the transfer of excess defense articles that the military departments have determined is more economical to transfer rather than retrograde to the United States. This proposal would also authorize the provision of transportation and other services related to the transfer of excess defense articles and FEPP to foreign countries. Finally, the key to any transfer of excess defense articles will be (1) a determination by the owning military department that the excess defense articles are available for transfer and that the transfer of those defense articles is more economical compared to the cost of retrograding them to the United States, and (2) a determination under section 516(b)(1)(C) of the Foreign Assistance Act of 1961 that the transfer of the excess defense articles will not have an adverse impact on the military readiness of the

United States.

Budget Implications: If enacted, this proposal will not increase the budgetary requirements of the Department of Defense. This proposal would provide the military departments and USCENTCOM the option, when it makes financial sense -- e.g., a determination has been made by the military department that it would be beneficial and cost effective, to transfer excess defense articles rather than bringing the equipment home to the United States and resetting. The intent of the proposal is to provide cost saving alternatives allowing the military departments to off-ramp equipment that they foresee will not meets current and future requirements instead of incurring the full retrograde and reset cost to bring equipment back to the United States.

RESOURCE SAVINGS ($THOUSANDS)								
	FY 2013	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Army	+0	+0	+0	+0	+0	O&M, Army-		
Navy	+0	+0	+0	+0	+0	O&M, Navy		
Marine Corps	+0	+0	+0	+0	+0	O&M, Marine Corps		
Coast Guard	+0	+0	+0	+0	+0	O&M, Coast Guard		
Air Force	+0	+0	+0	+0	+0	O&M, Air Force – 3400		
DOD	+0	+0	+0	+0	+0	O&M, Department of Defense-wide		
Total	+0	+0	+0	+0	+0			

NUMBER OF PERSONNEL AFFECTED							
	FY 2013	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**Appropriation To**	**Personnel Type (Officer, Enlisted, or Civilian)**
Army	0	0	0	0	0	N/A	N/A
Navy	0	0	0	0	0	N/A	N/A
Marine Corps	0	0	0	0	0	N/A	N/A

Air Force	0	0	0	0	0	N/A	N/A
Total	0	0	0	0	0		

Cost Methodology: DoD currently projects that the cost of retrograde of the equipment currently in theater will exceed $6 billion. Although each transaction will be on a case-by-case basis to determine if it is more economical, looking at the total life cycle cost of the equipment plus retrograde and reset cost, to procure a new end item or transfer the equipment, to include transportation paid for by the military department, the net result will be a savings to the Government. Savings will be in the form of reduced transportation costs currently budgeted to retrograde the identified equipment.

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