

Section-by-Section Analysis

TITLE I—PROCUREMENT

Subtitle A—Authorization of Appropriations

Sections 101 through 106 would authorize appropriations for fiscal year 2018 for the procurement accounts of the Department of Defense in amounts equal to the budget authority requested in the President’s Budget for fiscal year 2018.

Subtitle B—Air Force Programs

Section 111 would provide authority to use Air Force procurement funds to purchase intercontinental ballistic missile (ICBM) fuze Commercial-Off-The-Shelf (COTS) parts qualified for use during and after exposure to nuclear environments sufficient to support the life of the program. This proposal would provide for the fourth year (fiscal year (FY) 2018) of a planned five-year life-of-type procurement strategy (FY 2015-2019) first authorized in section 1645 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 128 Stat. 3651).

The Navy and Air Force are developing nuclear warhead fuzes for use on their respective Trident II and Minuteman III ballistic missiles. The Services are cooperating in their fuze development and production efforts at the direction of the Nuclear Weapons Council. The National Nuclear Security Administration (NNSA) is supporting both Services with Sandia National Laboratories (SNL) as the Design Agent and Kansas City National Security Campus (KCNSC-formerly the Kansas City Plant) as the Production Agent. This cooperation will leverage the use of common designs, processes, and parts to improve sustainability and reduce life cycle costs.

The life-of-type procurement strategy is critical to affordably buy qualified COTS parts for use during and after exposure to nuclear environments and to ensure commonality between the Air Force and the Navy. The Air Force plans to procure COTS parts common to the Minuteman III and Trident II warhead fuze programs to provide a pool of interchangeable, qualified, and certified parts. Examples of parts to be procured include: Application Specific Integrated Circuits, Radio Frequency Integrated Circuits, Heterojunction Bipolar Transistors, Wafers, Diodes, Actuators, Special Blend Glass Igniters, and Titanium Potassium Perchlorate Powder Igniters. Procured parts will be delivered to the NNSA’s KCNSC for use in producing common component modules for the Air Force and Navy fuzes. Some component modules will be entirely interchangeable between the Services while others will have interchangeable subassemblies.

Procurement of these parts in quantities to support development, production, and spares is necessary because qualification and certification of COTS parts to operate during and after exposure to nuclear radiation environments is limited to a selected supplier for a particular period of production. Due to the unique military requirement for operation during and after exposure to

nuclear radiation environments, the Government selects, tests, qualifies, and certifies these parts for use in nuclear weapon fuzes. This process characterizes the range of degraded performance in nuclear radiation environments which is then used in determining the design of the fuze and its component modules. The Government’s qualification and certification is limited to specific production lots due to variations in supplier processes and materials which significantly change electronics performance in nuclear radiation environments. These changes in supplier processes and materials may not appreciably change performance in meeting commercial specifications. Parts available from the supplier in subsequent production lots or from other suppliers are not qualified or certified for use in nuclear weapon fuzes without retesting, requalification, and recertification and associated redesign of the fuze and its component modules, if required. If redesign is required, the parts require a new part number and separate supply chain management.

The FY 2018 President’s Budget includes funding for Air Force ICBM Fuze life-of-type buy parts to coincide with Navy nuclear qualification, certification, and procurement of the same parts. These procurements must occur in FY 2018 to ensure qualified, interchangeable parts are available for the initiation of Navy fuze procurement and subsequent Air Force fuze procurement. Utilizing subsequent production lots would require separate nuclear qualification and certification processes, resulting in two pools of non-interchangeable parts, loss of commonality with the Navy fuze, increased life cycle costs, and would add significant risk to the ICBM First Production Unit (FPU) delivery in FY 2022.

Budget Implications: The FY 2018 budget request includes \$6.334 million necessary to procure these COTS parts. Additional funds for FY 2019 have been programmed for follow-on procurements of additional parts. No additional funds are required to execute this authority.

Without this authority, there is a range of impacts. Assuming the program is still able to procure the same hardware for the common components, the program cost would increase by \$206.6 million. This total program cost increase is comprised of \$18.5 million in additional qualification costs and \$188.1 million from a potential one-year program slip due to the increased development schedule.

At the other end of the range of impacts, the worst case scenario would be that the program cannot procure the same hardware for the common components and will need to redesign those components to support Air Force requirements. In this situation, the program will slip a minimum of three years to support redesign. Given this scenario, the program cost would increase by \$564.7 million. This total program cost increase is comprised of \$25.2 million in additional qualification costs and \$539.5 million from the minimum three-year program slip due to redesign requirements. The resources reflected in the table below are funded within the FY 2018 President’s Budget.

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
M30 FLH/ICBM Fuze Mod	6.3	9.8	0.0	0.0	0.0	Missile Procurement, Air Force	3	P-9	0101213F
Total	6.3	9.8	0.0	0.0	0.0	--	--	--	--

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

Subtitle C—Defense-wide, Joint, and Multiservice Matters

Section 121, the Department of Defense intends on executing an F-35 Block Buy contracting strategy for F-35 International Partners and Foreign Military Sales customers for production Lots 12, 13 and 14, including the procurement of material and equipment in economic order quantities. The United States Services will not participate in the Block Buy for Lots 12, 13 and 14 but instead will obtain annual authorization and appropriations for these three production lots. However, to maximize overall savings and flexibility while at the same time minimizing risk, the Department requests authority for the use of Department funds to award F-35 contracts in FY 2018 to procure material and equipment in economic order quantities for the FY 2019 (Lot 13) and FY 2020 (lot 14) production contracts.

Awarding these contracts in fiscal year 2018, combined with economic order quantity investments from international partners and foreign military sales customers for their aircraft, will contribute to an overall savings of \$2.36 billion across the partnership for lots 12, 13, and 14. Not funding this investment in this budget cycle would create a significant funding shortfall in fiscal year 2019 and fiscal year 2020 for the United States Services and would prevent international partners and foreign military sales customers from fully realizing their respective savings.

Limiting the use of this authority to procure material and equipment in economic order quantities that has already completed formal qualification testing is designed ensure the risk is very low for hardware design changes subsequent to procurement.

This is funded in the FY 2018 President’s Budget.

Budget Implications:

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
USAF	344.300					Aircraft Procurement, Air Force	01	2	0207142F
USMC	182.977					Aircraft Procurement, Navy	01	7	0204146M
USN	133.711					Aircraft Procurement, Navy	01	5	0204146N
Total	660.988					--	--	--	--

Changes to Existing Law: none.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Section 201 would authorize appropriations for fiscal year 2018 for the research, development, test, and evaluation accounts of the Department of Defense in amounts equal to the budget authority requested in the President’s Budget for fiscal year 2018.

TITLE III—OPERATION AND MAINTENANCE

Section 301 would authorize appropriations for fiscal year 2018 for the Operation and Maintenance accounts of the Department of Defense in amounts equal to the budget authority requested in the President’s Budget for fiscal year 2018.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

Section 401 would prescribe the personnel strengths for the active forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense in the President’s Budget for fiscal year 2018.

Subtitle B—Reserve Forces

Section 411 would prescribe the end strengths for the Selected Reserve of each reserve component of the Armed Forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense, and the Department of Homeland Security for the Coast Guard Reserve, in the President’s Budget for fiscal year 2018.

Section 412 would prescribe the end strengths for reserve component members on full-time active duty or full-time National Guard duty for the purpose of administering the reserve forces for fiscal year 2018.

Section 413 would prescribe the end strengths for dual-status technicians of the reserve components of the Army and Air Force for fiscal year 2018.

Section 414 would prescribe the maximum number of reserve personnel authorized to be on active duty for operational support.

Subtitle C—Authorization of Appropriations

Section 421 would authorize appropriations for fiscal year 2018 for military personnel.

TITLE V—MILITARY PERSONNEL POLICY

Section 501 would provide Reserve Component (RC) members the same retirement age eligibility benefits regardless of their volunteer status to perform missions in support of a combatant command. RC members may have their retirement eligibility age reduced when they volunteer to perform active duty under 10 U.S.C. 12301(d). This proposal would allow RC members who are involuntarily activated under 10 U.S.C. 12304b to receive the same benefits as those RC members who have volunteered to perform duty in support of a combatant command.

Currently, two RC members who are serving side-by-side on active duty in support of a combatant command may receive different retirement age eligibility benefits. The RC member who volunteered for the duty (12301(d)) may have their retirement age eligibility reduced by three months for each aggregate of 90 days of duty performed in any fiscal year. The RC member who was involuntarily activated (12304b) for the same duty, may not have their retirement age eligibility reduced.

The involuntarily activated RC member may be making additional sacrifices with their civilian career or family situation during the activation compared to the voluntary RC member. Equity suggests the benefits of both voluntarily and involuntarily activated RC members for identical duty should be the same.

Budget Implications: The number of personnel affected is a projection based on Fiscal Year (FY) 2018 12304b programmed requirements. This budget methodology makes the following assumption:

The Services provided 12304b projections for FY 2018-2022 and expect to maintain a total steady state of 14,000 12304b activations to sustain the preprogrammed operations tempo from FY2018-2022.

The DoD Office of the Actuary used a 10-year look from FY 2014 to FY 2024 to compute an estimated cost. The cost for the Services is the Retired Pay Accrual contribution paid to the Military Retirement Trust Fund. The actuaries are unsure if this proposal will have a cost, but felt that the estimated costs in the table below should be included in good faith. For example, for budgeting purposes, the early retirement eligibility authorization effectively reduces the budgeted RC retirement age from 60 to 58. Extending early retirement eligibility to 12304b active duty may not move the needle enough to effectively reduce the estimated early retirement age from 58 years to 57 years and 11 months.

The DoD Office of the Actuary states “if [the ULB is] enacted, actual results/costs implemented by the DoD Board of Actuaries may differ from those shown in this estimate. They may decide to not reflect costs until actual experience emerges, or decide the impact is below the valuation’s rounding thresholds.” For example, the actuaries estimate the Retired Pay Accrual contribution of \$5.5 million for the Army in FY 2022 for the range of 1,000 – 10,000 man-years worth of 12304b activations.

The 5 years of cost estimated required for the ULB submission (FY 2018-2022) are included in the table below.

Actuary costs assume 14 percent of new entrants to the part-time drilling reserves become eligible for a reserve non-disability retirement. The resources reflected in the table below are funded within the FY 2018 President's Budget.

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Air Force	1.15	1.15	1.20	1.25	1.25	Military Personnel, Air Force	01 02	010 065	
Army	5.00	5.10	5.20	5.40	5.50	Military Personnel, Army	01/02	05/06	
Navy	.02	.04	.04	.04	.04	Military Personnel, Navy	01/02	010 065	
Marines	0.13	0.11	0.11	0.12	0.12	Military Personnel, Marine Corps	01/02	010 065	
Total	6.30	6.40	6.55	6.81	6.91				

NUMBER OF PERSONNEL AFFECTED					
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Army (Base)	2,000	2,000	2,000	2,000	2,000
Army (OCO)	12,000	12,000	12,000	12,000	12,000
Air Force	1,010	1,010	1,010	1,010	1,010
Navy	66	100	100	100	100
Marines	366	299	299	299	299
Total	15,442	15,409	15,409	15,409	15,409

Changes to Existing Law: This proposal would make the following change to section 12731(f)(2)(B)(i) of title 10, United States Code.

Title 10, United States Code

§ 12731. Age and service requirements

* * * * *

(f)(1) Subject to paragraph (2), the eligibility age for purposes of subsection (a)(1) is 60 years of age.

(2)(A) In the case of a person who as a member of the Ready Reserve serves on active duty or performs active service described in subparagraph (B) after January 28, 2008, the eligibility age for purposes of subsection (a)(1) shall be reduced, subject to subparagraph (C),

below 60 years of age by three months for each aggregate of 90 days on which such person serves on such active duty or performs such active service in any fiscal year after January 28, 2008, or in any two consecutive fiscal years after September 30, 2014. A day of duty may be included in only one aggregate of 90 days for purposes of this subparagraph.

(B)(i) Service on active duty described in this subparagraph is service on active duty pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) or under section 12301(d) **or 12304b** of this title. Such service does not include service on active duty pursuant to a call or order to active duty under section 12310 of this title.

(ii) Active service described in this subparagraph is also service under a call to active service authorized by the President or the Secretary of Defense under section 502(f) of title 32 for purposes of responding to a national emergency declared by the President or supported by Federal funds.

(iii) If a member described in subparagraph (A) is wounded or otherwise injured or becomes ill while serving on active duty pursuant to a call or order to active duty under a provision of law referred to in the first sentence of clause (i) or in clause (ii), and the member is then ordered to active duty under section 12301(h)(1) of this title to receive medical care for the wound, injury, or illness, each day of active duty under that order for medical care shall be treated as a continuation of the original call or order to active duty for purposes of reducing the eligibility age of the member under this paragraph.

(iv) Service on active duty described in this subparagraph is also service on active duty pursuant to a call or order to active duty authorized by the Secretary of Homeland Security under section 712 of title 14 for purposes of emergency augmentation of the Regular Coast Guard forces.

(C) The eligibility age for purposes of subsection (a)(1) may not be reduced below 50 years of age for any person under subparagraph (A).

(3) The Secretary concerned shall periodically notify each member of the Ready Reserve described by paragraph (2) of the current eligibility age for retired pay of such member under this section, including any reduced eligibility age by reason of the operation of that paragraph. Notice shall be provided by such means as the Secretary considers appropriate taking into account the cost of provision of notice and the convenience of members.

Section 502 would add sections 12304a and 12304b of title 10, United States Code, to the list of authorities that will extend the vocational rehabilitation benefit period of eligibility for veterans, and ensures that individuals serving under sections 12304a and 12304b are entitled to the same benefits under the same conditions as those serving under other calls or orders to active duty. The vocational rehabilitation program must be utilized within twelve-years of being discharged or released from active service. Currently, if a veteran was prevented from participating in a vocational rehabilitation program under chapter 31 of title 38, United States Code, within the period of eligibility due to certain activations to active service, the period of eligibility will be extended for the period of active service plus four months. Reserve component (RC) members eligible for the vocational rehabilitation program will have their period of eligibility extended when they volunteer to perform active duty under section 12301(d) of title 10. This proposal would allow RC members who are involuntarily activated under section 12304a or 12304b of title 10 to receive the same benefits as those RC members who have volunteered to perform duty.

Currently, two RC members who are serving side-by-side on active duty may not receive the same vocational rehabilitation program benefits. The RC member who volunteered for duty under section 12301(d) may have their vocational rehabilitation program eligibility benefits extended. The RC member who was involuntarily activated under section 12304a or 12304b for similar duty, may not have their program eligibility benefits extended.

The involuntarily activated RC member may be making additional sacrifices with their civilian career or family situation during the activation compared to the voluntary RC member. Equity suggests the benefits of both voluntarily and involuntarily activated RC members for identical duty should be the same.

Budget Implications: None for DOD. The VA funds the Vocational Rehabilitation benefit at no cost to DoD. This benefit is elective. VA estimates that the proposal will result in minimal additional costs for the Department because nearly all eligible Veterans utilize their benefits within their 12-year delimiting date.

PERSONNEL AFFECTED (THOUSANDS)					
	FY18	FY19	FY20	FY21	FY22
Army	3000	3000	3000	3000	3000
Air Force	1300	1300	1300	1300	1300
Navy	1281	1233	1192	1187	1196
Marines	601	601	601	601	601
Total	3182	3134	3093	3088	3097

Changes to Existing Law: This proposal would make the following changes to sections 3103(f) and 3105(e) of title 38, United States Code:

§ 3103. Periods of Eligibility

* * * * *

(f) In any case in which the Secretary has determined that a veteran was prevented from participating in a vocational rehabilitation program under this chapter within the period of eligibility otherwise prescribed in this section as a result of being ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, ~~or 12304~~, 12304, 12304a, or 12304b of title 10, such period of eligibility shall not run for the period of such active duty service plus four months.

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§3105. Duration of rehabilitation programs

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(e)(1) Notwithstanding any other provision of this chapter or chapter 36 of this title, any payment of a subsistence allowance and other assistance described in paragraph (2) shall not-

(A) be charged against any entitlement of any veteran under this chapter; or
 (B) be counted toward the aggregate period for which section 3695 of this title limits an individual's receipt of allowance or assistance.

(2) The payment of the subsistence allowance and other assistance referred to in paragraph (1) is the payment of such an allowance or assistance for the period described in paragraph (3) to a veteran for participation in a vocational rehabilitation program under this chapter if the Secretary finds that the veteran had to suspend or discontinue participation in such vocational rehabilitation program as a result of being ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, ~~or 12304~~12304, 12304a, or 12304b of title 10.

(3) The period for which, by reason of this subsection, a subsistence allowance and other assistance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of this title shall be the period of participation in the vocational rehabilitation program for which the veteran failed to receive credit or with respect to which the veteran lost training time, as determined by the Secretary.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Pay and Allowances

Section 601 would provide members of the uniformed services with an increase in rates of basic pay of 2.1 percent effective January 1, 2018. Military compensation is, and must, remain highly competitive to sustain the recruitment and retention of high caliber men and women into the arduous task of serving the nation in uniform. Given the continuing recovery of the nation's economy and the decrease in the unemployment rate it is necessary to increase the basic pay to maintain the quality demanded for America's all-volunteer force.

Budget Implications: Setting the Fiscal Year 2018 pay raise at 2.1 percent will affect all 2.1 million Active, Reserve, and National Guard Service members. The projected savings by component across the Future Years Defense Program from the lower 2.1 percent basic pay raise (vice 2.4 percent ECI) is detailed in the table below.

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation To	Budget Activity	Dash-1 Line Item	Program Element
Army	(63.6)	(87.5)	(89.2)	(91.0)	(92.9)	Military Personnel, Army	01, 02, 03	05, 060, 110	
Army Reserve	(8.4)	(11.5)	(11.7)	(11.9)	(12.2)	Reserve Personnel, Army	01	10, 70, 80, 90	
Army National Guard	(14.1)	(19.3)	(19.7)	(20.1)	(20.5)	National Guard Personnel, Army	01	10, 70, 80, 90	
Navy	(42.2)	(57.5)	(58.5)	(59.6)	(60.7)	Military	01, 02, 03	5, 60, 110	

						Personnel, Navy			
Navy Reserve	(3.0)	(4.1)	(4.2)	(4.3)	(4.3)	Reserve Personnel, Navy	01	10, 20, 30, 90	
Marine Corps	(21.0)	(28.6)	(29.1)	(29.7)	(30.4)	Military Personnel, Marine Corps	01, 02	5, 60	
Marine Corps Reserve	(1.2)	(1.6)	(1.7)	(1.7)	(1.7)	Reserve Personnel, Marine Corps	01	10, 20, 30, 90	
Air Force	(44.7)	(61.0)	(62.3)	(63.6)	(64.9)	Military Personnel, Air Force	01, 02, 03	5, 60, 110	
Air Force Reserve	(2.8)	(3.8)	(3.8)	(3.9)	(4.0)	Reserve Personnel, Air Force	01	10,20,30, 40,70,80, 90	
Air National Guard	(5.4)	(7.4)	(7.5)	(7.7)	(7.9)	National Guard Personnel, Air Force	01	10, 30, 40, 70, 80, 90	
Total*	(206.4)	(282.2)	(287.7)	(293.5)	(299.5)				

*Totals may not add due to rounding

Changes to Existing Law: This proposal would make no changes to the text of existing law.

Subtitle B—Bonuses and Special Incentive Pays

Section 611 would extend certain expiring bonus and special pay authorities.

Subsection (a) of this proposal would extend income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service through December 31, 2018. The Department of Defense and Congress recognize the prudence of this incentive, which compensates an involuntarily mobilized Reserve Service member in an amount equal to the monthly income differential between the member's average monthly civilian income and the member's total monthly military compensation. The reserve pay authorities in sections 308b, 308c, 308d, 308g, 308h and 308i of title 37, United States Code, are no longer utilized by the Department and have been incorporated into section 331 of title 37, United States Code. The Department requests that the reserve pay authorities in such sections 308b, 308c, 308d, 308g, 308h and 308i be allowed to expire.

Subsection (b) of this proposal would extend two critical recruitment and retention incentive programs for Reserve component health care professionals through December 31, 2018. The Reserve components historically have found it challenging to meet the required manning in the health care professions. This incentive, which targets health care professionals with these critical skills, is essential to meet required manning levels. The health professions loan repayment program has proven to be one of our most powerful recruiting tools for attracting

young health professionals trained in specialty areas that are critically short in the Selected Reserve. Extending this authority is critical to the continued success of recruiting young, skilled health professionals into the Selected Reserve.

Subsection (c) of this proposal would extend accession and retention incentives for certain nurses, psychologists, and medical, dental and pharmacy officers until January 27, 2018. Experience shows that manning levels in these health care professional fields would be unacceptably low without these incentives, which in turn would generate substantially greater costs associated with recruiting and development of replacements. The Department of Defense and Congress have long recognized the prudence of these incentives in supporting effective personnel levels within these specialized fields. In accordance with section 662(b) of National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 180), the health professional special and incentive pay authorities in subchapter I of chapter 5 of title 37, United States Code, will transition to the consolidated special and incentive pay authorities in section 335 of title 37, United States Code (Special Bonus and Incentive Pay Authorities for Officers in Health Professions), no later than January 28, 2018.

Subsection (d) of this proposal would extend accession and retention incentives for nuclear-qualified officers through December 31, 2018. These incentives enable Navy to attract and retain the qualified personnel required to maintain the operational readiness and unparalleled safety record of the nuclear-powered submarines and aircraft carriers, which comprise over 40% of the Navy's major combatants. Due to extremely high training costs and regulatory requirements for experienced supervisors, these incentives provide the surest and most cost-effective means to maintain the required quantity and quality of these officers.

The nuclear officer bonus and nuclear officer incentive pay (NOIP) program is structured to provide career-long retention of officers in whom the Navy has made a considerable training investment and who have continually demonstrated superior technical and management ability. The scope of the program is limited to the number of officers required to fill critical nuclear supervisory billets, and eligibility is strictly limited to those officers who continue to meet competitive career milestones. The technical, leadership, and management expertise developed in the Naval Nuclear Propulsion Program (NNPP) is highly valued in the civilian workforce, which makes the retention of these officers a continuing challenge.

Subsection (e) of this proposal would extend through December 31, 2018, the consolidated special and incentive pay authorities added to subchapter II of chapter 5 of title 37, United States Code, by the National Defense Authorization Act for FY2008, to which the Department of Defense will transition over a 10 year period. Experience shows that retention of members in critical skills would be unacceptably low without these incentives, which in turn would generate substantially greater costs associated with recruiting and developing replacements. The Department and the Congress have long recognized the cost-effectiveness of financial incentives in supporting effective staffing in such critical military skills, assignments, and high priority units.

Subsection (f) of this proposal would extend the accession bonus for new officers in critical skills, the accession bonus for officer candidates, the aviation retention bonus, and the enlisted conversion bonus through January 27, 2018. It would also extend incentive pay for members in designated assignments and a bonus for transfers between the Armed Forces. In accordance with section 662(b) of National Defense Authorization Act for Fiscal Year 2008, the special and incentive pay authorities extended under subsection (f) will transition to the consolidated special and incentive pay authorities in sections 331, 332, and 352 of title 37, United States Code, no later than January 28, 2018. The enlistment bonus (section 309) and reenlistment bonus (section 308) authorities have transitioned to section 331 of title 37, United States Code.

This proposal would not extend sections 316a of title 37, United States Code – Special pay: incentive pay for members of precommissioning programs pursuing foreign language proficiency, and section 478a of title 37, United States Code – Travel and transportation allowance: inactive duty training outside of normal commuting distances. The Department of Defense no longer uses these authorities and has transitioned the programs under these authorities to other sections in title 37, United States Code. Incentive pay for members of precommissioning programs pursuing foreign language proficiency is authorized under section 353 of title 37, United States Code – Skill incentive pay or proficiency bonus. The travel and transportation allowance for inactive duty training outside of normal commuting distances is authorized under section 452 of title 37, United States Code – Allowable travel and transportation: general authorities, which is a permanent authority.

This proposal would also allow the enlistment and reenlistment pay authorities under sections 308, 308b, 308c, 308d, 308g, 308h, 308i and 309 of title 37, United States Code, as well as the nuclear pay authorities under sections 312, 312b and 312c of title 37, United States Code, to expire on December 31, 2017. Members receiving a bonus or incentive payments under these authorities will continue to receive payments for the length of their agreements. However, no new agreements may be offered after December 31, 2016. These pay authorities have transitioned to the consolidated pay authorities extended under subsection (e).

ONE-YEAR EXTENSION AUTHORITIES FOR RESERVE FORCES:

Budget Implications: This section will extend for one year critical income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service.

Table 1a. NUMBER OF PERSONNEL AFFECTED								
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation To	Budget Activity	Dash-1 Line Item
Army	0	0	0	0	0	Military Personnel, Army	06	40
Navy,	0	0	0	0	0	Military Personnel, Navy,	06	212

Total	0	0	0	0	0			
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Table 1b. RESOURCE REQUIREMENTS (\$ MILLIONS)								
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation To	Budget Activity	Dash-1 Line Item
Army	0	0	0	0	0	Military Personnel, Army	06	40
Navy	0	0	0	0	0	Military Personnel, Navy,	06	212
Total	\$0	\$0	\$0	\$0	\$0			

ONE-YEAR EXTENSION OF CERTAIN BONUS AND SPECIAL PAY AUTHORITIES FOR CERTAIN HEALTH CARE PROFESSIONALS:

Budget Implications: This section will extend for one year critical accession and retention incentive programs, which the military departments fund annually. The military departments have already projected expenditures for these incentives and programmed them via budget proposals. The military departments have projected expenditures of \$52.6 to \$39.2 million annually for FY2018 and FY2022 for these incentives in their budget proposals, to be funded from the Military Personnel accounts. Tables 2a and 2b included the numbers and funding for the pay authorities listed in subsection (b) and (c). For FY2019 and beyond, the numbers are included with the consolidated pay in Tables 4a and 4b.

Table 2a. NUMBER OF PERSONNEL AFFECTED								
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation To	Budget Activity	Line Item
Army*	61	0	0	0	0	Military Personnel, Army	01	40
Army Res*	852	852	852	852	852	Reserve Personnel, Army	01	120
Army National Guard*	452	452	452	452	452	National Guard Personnel, Army	01	90
Navy*	6	0	0	0	0	Military Personnel, Navy;	01	40
Navy Res*	87	87	87	87	87	Reserve Personnel, Navy	01	120
Air Force*	25	0	0	0	0	Military Personnel, Air Force	01	40
AF Res*	97	97	97	97	97	Reserve Personnel, Air Force	01	120
Air National Guard*	36	36	36	36	36	National Guard Personnel, Air Force	01	90
Total	1,616	1,524	1,524	1,524	1,524			

Table 2b. RESOURCE REQUIREMENTS (\$ MILLIONS)								
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation	Budget	Line

						To	Activity	Item
Army*	\$4.2	0	0	0	0	Military Personnel, Army;	01	40
Army Res*	\$17.6	\$17.6	\$17.6	\$17.6	\$17.6	Reserve Personnel, Army	01	120
Army National Guard*	\$14.6	\$14.6	\$14.6	\$14.6	\$14.6	National Guard Personnel, Army	01	90
Navy*	\$1.9	0	0	0	0	Military Personnel, Navy;	01	40
Navy Res*	\$3.5	\$3.5	\$3.5	\$3.5	\$3.5	Reserve Personnel, Navy	01	120
Air Force*	\$7.2	0	0	0	0	Military Personnel, Air Force	01	40
AF Res*	\$2.8	\$2.8	\$2.8	\$2.8	\$2.8	Reserve Personnel, Air Force	01	120
Air National Guard	\$.7	\$.7	\$.7	\$.7	\$.7	National Guard Personnel, Air Force	01	90
Total	\$52.6	\$39.2	\$39.2	\$39.2	\$39.2			

* Values reflect FY2018 estimate in the Services FY2018 Budget Estimate.

ONE-YEAR EXTENSION OF SPECIAL PAY AND BONUS AUTHORITIES FOR NUCLEAR OFFICERS:

Budget Implications: This section will extend for one year the critical accession and retention incentive programs the Navy funds each year. The Navy has already projected expenditures for these incentives and programmed them into budget proposals. The Navy has projected expenditures of about \$82.8 million annually, to be funded from their Military Personnel account, to account for new and renegotiated contracts to be executed each year from FY 2018 through 2022. The Army and Air Force are not authorized in the statute to pay these bonuses.

Table 3a. NUMBER OF PERSONNEL AFFECTED								
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation To	Budget Activity	Dash-1 Line Item
Navy*	2,878	2,878	2,878	2,878	2,878	Military Personnel, Navy	01, 03	40 (for 01); 90 (for 02); 110 (for 03)
Navy Res*	175	175	175	175	175	Reserve Personnel, Navy	01	90
Total	3,053	3,053	3,053	3,053	3,053			

Table 3b. RESOURCE REQUIREMENTS (\$MILLIONS)								
--	--	--	--	--	--	--	--	--

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation To	Budget Activity	Dash-1 Line Item
Navy*	\$80.2	\$80.2	\$80.2	\$80.2	\$80.2	Military Personnel, Navy	01, 03	40 (for 01); 90 (for 02); 110 (for 03)
Navy Res*	\$2.6	\$2.6	\$2.6	\$2.6	\$2.6	Reserve Personnel, Navy	01	90
Total	\$82.8	\$82.8	\$82.8	\$82.8	\$82.8			

* Values reflect FY2018 estimate in the Services FY2018 Budget Estimate.

ONE-YEAR EXTENSION OF AUTHORITIES RELATING TO CONSOLIDATED SPECIAL PAY, INCENTIVE PAY, AND BONUS AUTHORITIES.

Budget Implications: This section will extend for one year the consolidated special and incentive programs the military departments fund each year. These pays consist of enlisted bonuses, non-physician health professions pays, and critical skill retention bonuses. This section does not include the nuclear officer pays, which are located in tables 3a and 3b. The military departments have already projected expenditures for these incentives and programmed them via budget proposals. Specifically, the military departments have projected expenditures of \$4.5 billion to \$4.8 billion annually from FY 2018 through FY 2022 for these incentives in their budget proposals, to be funded from the Military Personnel accounts.

Table 4a. NUMBER OF PERSONNEL AFFECTED								
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation To	Budget Activity	Line Item
Army*	279,755	302,639	302,639	302,639	302,639	Military Personnel, Army	01, 02	35 & 40 (for 01), 85 & 90 (for 02)
ARNG*	29,684	29,684	29,684	29,684	29,684	National Guard Personnel, Army	01	90
USAR*	62,289	62,289	62,289	62,289	62,289	Reserve Personnel, Army	01	90
Navy*	297,064	301,626	301,626	301,626	301,626	Military Personnel, Navy	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
USNR*	6,108	6,108	6,108	6,108	6,108	Reserve Personnel, Navy	01	90
Marine Corps*	41,943	42,003	42,003	42,003	42,003	Military Personnel, Marine Corps	01, 02	35 & 40 (for 01); 85 & 90 (for 02)

USMCR*	445	445	445	445	445	Reserve Personnel, Marine Corps	01	90
Air Force*	110,295	121,386	121,386	121,386	121,386	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
ANG*	6,634	6,634	6,634	6,634	6,634	National Guard Personnel, Air Force	01	90
USAFR*	10,956	10,956	10,956	10,956	10,956	Reserve Personnel, Air Force	01	90
Total	845,173	883,770	883,770	883,770	883,770			

Table 4b. RESOURCE REQUIREMENTS (\$ MILLIONS)

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation To	Budget Activity	Line Item
Army*	\$1,701	\$1,782	\$1,782	\$1,782	\$1,782	Military Personnel, Army	01, 02	35 & 40 (for 01), 85 & 90 (for 02)
ARNG*	\$132.7	\$132.7	\$132.7	\$132.7	\$132.7	National Guard Personnel, Army	01	90
USAR*	\$186.4	\$186.4	\$186.4	\$186.4	\$186.4	Reserve Personnel, Army	01	90
Navy*	\$1,321	\$1,375	\$1,375	\$1,375	\$1,375	Military Personnel, Navy	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
USNR*	\$33.0	\$33.0	\$33.0	\$33.0	\$33.0	Reserve Personnel, Navy	01	90
Marine Corps*	\$175	\$175.6	\$175.6	\$175.6	\$175.6	Military Personnel, Marine Corps	01, 02	35 & 40 (for 01); 85 &

								90 (for 02)
USMCR*	\$6.5	\$6.5	\$6.5	\$6.5	\$6.5	Reserve Personnel, Marine Corps	01	90
Air Force*	\$874	\$1,012	\$1,012	\$1,012	\$1,012	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
ANG*	\$64.6	\$64.6	\$64.6	\$64.6	\$64.6	National Guard Personnel, Air Force	01	90
USAFR*	\$43.7	\$43.7	\$43.7	\$43.7	\$43.7	Reserve Personnel, Air Force	01	90
Total	\$4,538.3	\$4,810.7	\$4,810.7	\$4,810.7	\$4,810.7			

* Values reflect FY2018 estimate in the Services FY2018 Budget Estimate.

ONE-YEAR EXTENSION OF AUTHORITIES RELATING TO PAYMENT OF OTHER TITLE 37 BONUSES AND SPECIAL PAY:

Budget Implications: This section would extend for one year critical officer recruiting and retention incentive programs, which the military departments fund each year. It also includes assignment incentive pay and transfer bonuses. The military departments have already projected expenditures for these incentives and programmed them via budget proposals. Specifically, the military departments have projected expenditures of approximately \$259 million for FY2018 for these incentives, to be funded from the Military Personnel accounts. As of January 28, 2018, all of these authorities will transition to the consolidated pay authorities extended under subsection (e).

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation To	Budget Activity	Line Item
Army*	22,823	0	0	0	0	Military Personnel, Army	01, 02	35 & 40 (for 01), 85 & 90 (for 02)
Navy*	4,556	0	0	0	0	Military Personnel, Navy	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
Marine Corps*	60	0	0	0	0	Military Personnel, Marine Corps	01, 02	35 & 40 (for 01); 85 & 90 (for 02)

Air Force*	11,066	0	0	0	0	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
Total	38,505	0						

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation To	Budget Activity	Line Item
Army*	\$76.5	\$0	\$0	\$0	\$0	Military Personnel, Army	01, 02	35 & 40 (for 01), 85 & 90 (for 02)
Navy*	\$51.2	\$0	\$0	\$0	\$0	Military Personnel, Navy	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
Marine Corps*	\$.5	\$0	\$0	\$0	\$0	Military Personnel, Marine Corps	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
Air Force*	\$130.8	\$0	\$0	\$0	\$0	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)
Total	\$259.1	\$0	\$0	\$0	\$0			

* Values reflect FY2018 estimate in the Services FY2018 Budget Estimate.

Changes to Existing Laws: This proposal would make the following changes to title 10 and title 37, United States Code:

TITLE 10, UNITED STATES CODE

§ 2130a. Financial assistance: nurse officer candidates

(a) BONUS AUTHORIZED.—(1) A person described in subsection (b) who, during the period beginning on November 29, 1989, and ending on ~~December 31, 2017~~ December 31, 2018, executes a written agreement in accordance with subsection (c) to accept an appointment as a nurse officer may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus of not more than \$20,000. The bonus shall be paid in periodic installments, as determined by the Secretary concerned at the time the agreement is accepted, except that the first installment may not exceed \$10,000.

(2) In addition to the accession bonus payable under paragraph (1), a person selected under such paragraph shall be entitled to a monthly stipend in an amount not to exceed the stipend rate in effect under section 2121(d) of this title for each month the individual is enrolled as a full-time student in an accredited baccalaureate degree program in nursing at a civilian educational institution by the Secretary selecting the person. The continuation bonus may be paid for not more than 24 months.

* * * * *

§ 16302. Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages

(d) The authority provided in this section shall apply only in the case of a person first appointed as a commissioned officer before ~~December 31, 2017~~ December 31, 2018.

TITLE 37, UNITED STATES CODE

§ 301b. Special pay: aviation career officers extending period of active duty

(a) BONUS AUTHORIZED.—An aviation officer described in subsection (b) who, during the period beginning on January 1, 1989, and ending on ~~December 31, 2017~~ January 27, 2018, executes a written agreement to remain on active duty in aviation service for at least one year may, upon the acceptance of the agreement by the Secretary concerned, be paid a retention bonus as provided in this section.

* * * * *

§ 302c-1. Special pay: accession and retention bonuses for psychologists

(f) TERMINATION OF AUTHORITY.—No agreement under subsection (a) or (b) may be entered into after ~~December 31, 2017~~ January 27, 2018.

* * * * *

§ 302d. Special pay: accession bonus for registered nurses

(a) ACCESSION BONUS AUTHORIZED.—(1) A person who is a registered nurse and who, during the period beginning on November 29, 1989, and ending on ~~December 31, 2017~~ January 27, 2018, executes a written agreement described in subsection (c) to accept a commission as an officer and remain on active duty for a period of not less than three years may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus in an amount determined by the Secretary concerned.

(2) The amount of an accession bonus under paragraph (1) may not exceed \$30,000.

* * * * *

§ 302e. Special pay: nurse anesthetists

(a) SPECIAL PAY AUTHORIZED.—(1) An officer described in subsection (b)(1) who, during the period beginning on November 29, 1989, and ending on ~~December 31, 2017~~ January 27, 2018, executes a written agreement to remain on active duty for a period of one year or more may, upon the acceptance of the agreement by the Secretary concerned, be paid incentive special pay in an amount not to exceed \$50,000 for any 12-month period.

(2) The Secretary concerned shall determine the amount of incentive special pay to be paid to an officer under paragraph (1). In determining that amount, the Secretary concerned shall consider the period of obligated service provided for in the agreement under that paragraph.

* * * * *

§ 302g. Special pay: Selected Reserve health care professionals in critically short wartime specialties

(e) TERMINATION OF AGREEMENT AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2017~~ January 27, 2018.

* * * * *

§ 302h. Special pay: accession bonus for dental officers

(a) ACCESSION BONUS AUTHORIZED.—(1) A person who is a graduate of an accredited dental school and who, during the period beginning on September 23, 1996, and ending on ~~December 31, 2017~~ January 27, 2018, executes a written agreement described in subsection (c) to accept a commission as an officer of the armed forces and remain on active duty for a period of not less than four years may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus in an amount determined by the Secretary concerned.

(2) The amount of an accession bonus under paragraph (1) may not exceed \$200,000.

* * * * *

§ 302j. Special pay: accession bonus for pharmacy officers

(a) ACCESSION BONUS AUTHORIZED.—A person who is a graduate of an accredited pharmacy school and who, during the period beginning on October 30, 2000, and ending on ~~December 31, 2017~~ January 27, 2018, executes a written agreement described in subsection (d) to accept a commission as an officer of a uniformed service and remain on active duty for a period of not less than 4 years may, upon acceptance of the agreement by the Secretary concerned, be paid an accession bonus in an amount determined by the Secretary concerned.

* * * * *

§ 302k. Special pay: accession bonus for medical officers in critically short wartime specialties

(f) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2017~~ January 27, 2018.

* * * * *

§ 302l. Special pay: accession bonus for dental specialist officers in critically short wartime specialties

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2017~~ January 27, 2018.

* * * * *

§ 307a. Special pay: assignment incentive pay

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2017~~ January 27, 2018.

* * * * *

§ 324. Special pay: accession bonus for new officers in critical skills

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2017~~ January 27, 2018.

* * * * *

§ 326. Incentive bonus: conversion to military occupational specialty to ease personnel shortage

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2017~~ January 27, 2018.

* * * * *

§ 327. Incentive bonus: transfer between armed forces

(h) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2017~~ January 27, 2018.

* * * * *

§ 330. Special pay: accession bonus for officer candidates

(f) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2017~~ January 27, 2018.

* * * * *

§ 331. General bonus authority for enlisted members

(h) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2017~~ December 31, 2018.

* * * * *

§ 332. General bonus authority for officers

(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2017~~ December 31, 2018.

* * * * *

§ 333. Special bonus and incentive pay authorities for nuclear officers

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2017~~ December 31, 2018.

* * * * *

§ 334. Special aviation incentive pay and bonus authorities for officers

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2017~~ December 31, 2018.

* * * * *

§ 335. Special bonus and incentive pay authorities for officers in health professions

(k) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2017~~ December 31, 2018.

* * * * *

§ 336. Contracting bonus for cadets and midshipmen enrolled in the Senior Reserve Officers' Training Corps

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2017~~ December 31, 2018.

* * * * *

§ 351. Hazardous duty pay

(i) TERMINATION OF AUTHORITY.—No hazardous duty pay under this section may be paid after ~~December 31, 2017~~ December 31, 2018.

* * * * *

§ 352. Assignment pay or special duty pay

(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2017~~ December 31, 2018.

* * * * *

§ 353. Skill incentive pay or proficiency bonus

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2017~~ December 31, 2018.

* * * * *

§ 355. Special pay: retention incentives for members qualified in critical military skills or assigned to high priority units

(h) TERMINATION OF BONUS AUTHORITY.—No bonus may be paid under this section with respect to any reenlistment, or voluntary extension of an enlistment, in the armed forces entered into after ~~December 31, 2017~~December 31, 2018, and no agreement under this section may be entered into after that date.

* * * * *

§ 403. Basic allowance for housing

(b)(7)(E) An increase in the rates of basic allowance for housing for an area may not be prescribed under this paragraph or continue after ~~December 31, 2017~~December 31, 2018.

* * * * *

§ 910. Replacement of lost income: involuntarily mobilized reserve component members subject to extended and frequent active duty service

(g) TERMINATION.—No payment shall be made to a member under this section for months beginning after ~~December 31, 2017~~December 31, 2018, unless the entitlement of the member to payments under this section.

Section 612 would make technical and clerical corrections to titles 10, 14, 37, and 42, United States Code, as part of the Department's transition to the "consolidated authorities" described in Section 661 of the National Defense Authorization Act for Fiscal Year 2008, which provided eight consolidated statutory special and incentive pay authorities for future use to replace those currently in use.

This proposal is consistent in format and intent with technical corrections included each year in the annual NDAA. The proposal would make no substantive change in existing law, but would correct referring citations to reflect recent developments.

Budget Implications: This proposal would not have any budgetary implications for the Department of Defense.

Changes to Existing Law: This proposal would make the following changes to existing law:

1. TITLE 10, UNITED STATES CODE

§ 510. Enlistment incentives for pursuit of skills to facilitate national service

(a) ***

* * * * *

(i) Repayment. If a National Call to Service participant who has entered into an agreement under subsection (b) and received or benefitted from an incentive under paragraph (1) or (2) of subsection (e) fails to complete the total period of service specified in the agreement, the National Call to Service participant shall be subject to the repayment provisions of section 303a(e) or 373 of title 37.

* * * * *

§ 641. Applicability of chapter

Officers in the following categories are not subject to this chapter (other than section 640 and, in the case of warrant officers, section 628):

(1) Reserve officers--

(A) on active duty authorized under section 115(a)(1)(B) or 115(b)(1) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title;

(B) on active duty under section 3038, 5143, 5144, 8038, 10211, 10301 through 10305, 10502, 10505, 10506(a), 10506(b), 10507, or 12402 of this title or section 708 of title 32; or

(C) on full-time National Guard duty.

(2) The director of admissions, dean, and permanent professors at the United States Military Academy, the registrar, dean, and permanent professors at the United States Air Force Academy, and permanent professors of the Navy (as defined in regulations prescribed by the Secretary of the Navy).

(3) Warrant officers.

(4) Retired officers on active duty.

(5) Students at the Uniformed Services University of the Health Sciences.

~~(6) Officers appointed pursuant to an agreement under section 329 of title 37.~~

* * * * *

§ 703. Reenlistment leave

(a) ***

* * * * *

(b) Under regulations prescribed by the Secretary of Defense, and notwithstanding subsection (a), a member who is on active duty in an area described in sections 310(a)(2) or **paragraph (1) or (3) of section 351(a)** of title 37 [37 USCS § 310(a)(2)] and who, by reenlistment, extension of enlistment, or other voluntary action, extends his required tour of duty in that area for at least six months may be--Covered members. A member of the armed forces described in this subsection is any member who—

* * * * *

§ 705. Rest and recuperation absence: qualified members extending duty at designated locations overseas

(a) Under regulations prescribed by the Secretary concerned, a member of an armed force who--

(1) is entitled to basic pay;

(2) has a specialty that is designated by the Secretary concerned for the purposes of this section;

(3) has completed a tour of duty (as defined in accordance with regulations prescribed by the Secretary concerned) at a location outside the 48 contiguous States and the District of Columbia that is designated by the Secretary concerned for the purposes of this section; and

(4) at the end of that tour of duty executes an agreement to extend that tour for a period of not less than one year;

may, in lieu of receiving special pay under section 314 **or 352** of title 37 for duty performed during such extension of duty, elect to receive one of the benefits specified in subsection (b). Receipt of any such benefit is in addition to any other leave or transportation to which the member may be entitled.

* * * * *

§ 705a. Rest and recuperation absence: certain members undergoing extended deployment to a combat zone

(a) ***

* * * * *

(b) Covered members. A member of the armed forces described in this subsection is any member who--

(1) is assigned or deployed for at least 270 days in an area or location--

(A) that is designated by the President as a combat zone; and

(B) in which hardship duty pay is authorized to be paid under section 305 **or 352(a)** of title 37; and

* * * * *

§ 2005. Advanced education assistance: active duty agreement; reimbursement requirements

(a) The Secretary concerned may require, as a condition to the Secretary providing advanced education assistance to any person, that such person enter into a written agreement with the Secretary concerned under the terms of which such person shall agree--

(1) to complete the educational requirements specified in the agreement and to serve on active duty for a period specified in the agreement;

(2) that if such person fails to complete the education requirements specified in the agreement, such person will serve on active duty for a period specified in the agreement;

(3) that if such person does not complete the period of active duty specified in the agreement, or does not fulfill any term or condition prescribed pursuant to paragraph (4), such person shall be subject to the repayment provisions of section 303a(e) **or 373** of title 37; and

(4) to such other terms and conditions as the Secretary concerned may prescribe to protect the interest of the United States.

* * * * *

(c) As a condition of the Secretary concerned providing financial assistance under section

2107 or 2107a of this title to any person, the Secretary concerned shall require that the person enter into the agreement described in subsection (a). In addition to the requirements of paragraphs (1) through (4) of such subsection, the agreement shall specify that, if the person does not complete the education requirements specified in the agreement or does not fulfill any term or condition prescribed pursuant to paragraph (4) of such subsection, the person shall be subject to the repayment provisions of section 303a(e) or 373 of title 37 without the Secretary first ordering such person to active duty as provided for under subsection (a)(2) and sections 2107(f) and 2107a(f) of this title.

* * * * *

§ 2007. Payment of tuition for off-duty training or education

(a) ***

* * * * *

(e) (1) If an officer who enters into an agreement under subsection (b) does not complete the period of active duty specified in the agreement, the officer shall be subject to the repayment provisions of section 303a(e) or 373 of title 37.

(2) If a member of the Ready Reserve who enters into an agreement under subsection (c) does not complete the period of service specified in the agreement, the member shall be subject to the repayment provisions of section 303a(e) or 373 of title 37.

* * * * *

§ 2105. Advanced training; failure to complete or to accept commission

A member of the program who is selected for advanced training under section 2104 of this title [10 USCS § 2104], and who does not complete the course of instruction, or who completes the course but declines to accept a commission when offered, may be ordered to active duty by the Secretary of the military department concerned to serve in his enlisted grade or rating for such period of time as the Secretary prescribes but not for more than two years. If the member does not complete the period of active duty prescribed by the Secretary concerned, the member shall be subject to the repayment provisions of section 303a(e) or 373 of title 37.

* * * * *

§ 2123. Members of the program: active duty obligation; failure to complete training; release from program

(a) ***

* * * * *

(e) (1) A member of the program who is relieved of the member's active duty obligation under this subchapter before the completion of that active duty obligation may be given, with or without the consent of the member, any of the following alternative obligations, as determined by the Secretary of the military department concerned:

(A) A service obligation in another armed force for a period of time not less than the member's remaining active duty service obligation.

(B) A service obligation in a component of the Selected Reserve for a period not less than twice as long as the member's remaining active duty service obligation.

(C) Repayment to the Secretary of Defense of a percentage of the total cost incurred by the Secretary under this subchapter on behalf of the member pursuant to the repayment provisions of section 303a(e) **or 373** of title 37.

* * * * *

§ 2128. Accession bonus for members of the program

(a) ***

* * * * *

(c) Repayment. A person who receives an accession bonus under this section, but fails to comply with the agreement under section 2122(a)(2) of this title or to commence or complete the active duty obligation imposed by section 2123 of this title, shall be subject to the repayment provisions of section 303a(e) **or 373** of title 37.

* * * * *

§ 2130a. Financial assistance: nurse officer candidates

(a) ***

* * * * *

(d) Repayment. A person who does not complete a nursing degree program in which the person is enrolled in accordance with the agreement entered into under subsection (a), or having completed the nursing degree program, does not become an officer in the Nurse Corps of the Army or the Navy or an officer designated as a nurse officer of the Air Force or commissioned corps of the Public Health Service or does not complete the period of obligated active service required under the agreement, shall be subject to the repayment provisions of section 303a(e) **or 373** of title 37.

* * * * *

§ 2171. Education loan repayment program: enlisted members on active duty in specified military specialties

(a) ***

* * * * *

(g) Except a person described in subsection (e) who transfers to service making the person eligible for repayment of loans under section 16301 of this title, a member of the armed forces who fails to complete the period of service required to qualify for loan repayment under

this section shall be subject to the repayment provisions of section 303a(e) **or 373** of title 37.

* * * * *

§ 2173. Education loan repayment program: commissioned officers in specified health professions

(a) ***

* * * * *

(g) Effect of failure to complete obligation.

(1) A commissioned officer who is relieved of the officer's active duty obligation under this section before the completion of that obligation may be given, with or without the consent of the officer, any alternative obligation comparable to any of the alternative obligations authorized by section 2123(e) of this title for participants in the Armed Forces Health Professions Scholarship and Financial Assistance program.

(2) An officer who does not complete the period of active duty specified in the agreement entered into under subsection (b)(3), or the alternative obligation imposed under paragraph (1), shall be subject to the repayment provisions of section 303a(e) **or 373** of title 37.

* * * * *

§ 2200a. Scholarship program

(a) ***

* * * * *

(e) Repayment for period of unserved obligated service.

(1) A member of an armed force who does not complete the period of active duty specified in the service agreement under subsection (b) shall be subject to the repayment provisions of section 303a(e) **or 373** of title 37.

(2) A civilian employee of the Department of Defense who voluntarily terminates service before the end of the period of obligated service required under an agreement entered into under subsection (b) shall be subject to the repayment provisions of section 303a(e) **or 373** of title 37 in the same manner and to the same extent as if the civilian employee were a member of the armed forces.

* * * * *

§ 4348. Cadets: agreement to serve as officer

(a) ***

* * * * *

(f) A cadet or former cadet who does not fulfill the terms of the agreement as specified under subsection (a), or the alternative obligation imposed under subsection (b), shall be subject

to the repayment provisions of section 303a(e) **or 373** of title 37.

* * * * *

§ 6959. Midshipmen: agreement for length of service

(a) ***

* * * * *

(f) A midshipman or former midshipman who does not fulfill the terms of the agreement as specified under subsection (a), or the alternative obligation imposed under subsection (b), shall be subject to the repayment provisions of section 303a(e) **or 373** of title 37.

* * * * *

§ 9348. Cadets: agreement to serve as officer

(a) ***

* * * * *

(f) A cadet or former cadet who does not fulfill the terms of the agreement as specified under subsection (a), or the alternative obligation imposed under subsection (b), shall be subject to the repayment provisions of section 303a(e) **or 373** of title 37.

* * * * *

§ 16135. Failure to participate satisfactorily; penalties

(a) Penalties. At the option of the Secretary concerned, a member of the Selected Reserve of an armed force who does not participate satisfactorily in required training as a member of the Selected Reserve during a term of enlistment or other period of obligated service that created entitlement of the member to educational assistance under this chapter, and during which the member has received such assistance, may--

- (1) be ordered to active duty for a period of two years or the period of obligated service the person has remaining under section 16132 of this title, whichever is less; or
- (2) be subject to the repayment provisions under section 303a(e) **or 373** of title 37.

(b) Effect of repayment. Any repayment under section 303a(e) **or 373** of title 37 shall not affect the period of obligation of a member to serve as a Reserve in the Selected Reserve.

* * * * *

§ 16203. Penalties and limitations

(a) Failure to complete program of training.

- (1) A member of the program who, under regulations prescribed by the Secretary of

Defense, is dropped from the program for deficiency in training, or for other reasons, shall be required, at the discretion of the Secretary concerned--

(A) to perform one year of active duty for each year (or part thereof) for which such person was provided financial assistance under this section; or

(B) to comply with the repayment provisions of section 303a(e) or 373 of title 37.

* * * * *

§ 16301. Education loan repayment program: members of Selected Reserve

(a) ***

* * * * *

(h) Except a person described in subsection (e) who transfers to service making the person eligible for repayment of loans under section 2171 of this title, a member of the armed forces who fails to complete the period of service required to qualify for loan repayment under this section shall be subject to the repayment provisions of section 303a(e) or 373 of title 37.

§ 16303. Loan repayment program: chaplains serving in the Selected Reserve

(a) ***

* * * * *

(d) Effect of failure to complete obligation. A person on whose behalf a loan is repaid under subsection (a) who fails to commence or complete the period of obligated service specified in the agreement described in subsection (a)(3) shall be subject to the repayment provisions of section 303a(e) or 373 of title 37.

* * * * *

§ 16401. Marine Corps Platoon Leaders Class: college tuition assistance program

(a) ***

* * * * *

(f) Failure to complete program.

(1) An enlisted member who receives financial assistance under this section may be ordered to active duty in the Marine Corps by the Secretary to serve in an appropriate enlisted grade for such period as the Secretary prescribes, but not for more than four years, and an officer who receives financial assistance under this section shall be subject to the repayment provisions of section 303a(e) or 373 of title 37 [37 USCS § 303a(e)], if the member--

(A) completes the military and academic requirements of the Marine Corps Platoon Leaders Class program and refuses to accept an appointment as a commissioned officer in the Marine Corps when offered or, if already a commissioned officer in the Marine Corps, refuses to accept an assignment on active duty when offered;

(B) fails to complete the military or academic requirements of the Marine Corps Platoon Leaders Class program; or

(C) is disenrolled from the Marine Corps Platoon Leaders Class program for failure to maintain eligibility for an original appointment as a commissioned officer under section 532 of

this title.

(2) Any requirement to repay any portion of financial assistance received under this section shall be administered under the regulations issued under section 303a(e) **or 373** of title 37. The Secretary of the Navy may waive the requirements of paragraph (1) in the case of a person who--

* * * * *

2. TITLE 14, UNITED STATES CODE

§ 182. Cadets; number, appointment, obligation to serve

(a) ***

* * * * *

(g) A cadet or former cadet who does not fulfill the terms of the obligation to serve as specified under section (b), or the alternative obligation imposed under subsection (c), shall be subject to the repayment provisions of section 303a(e) **or 373** of title 37.

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3. TITLE 37, UNITED STATES CODE

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§ 552. Pay and allowances; continuance while in a missing status; limitations

(a) A member of a uniformed service who is on active duty or performing inactive-duty training, and who is in a missing status, is--

(1) for the period he is in that status, entitled to receive or have credited to his account the same pay and allowances, as defined in this chapter, to which he was entitled at the beginning of that period or may thereafter become entitled; and

(2) for the period, not to exceed one year, required for his hospitalization and rehabilitation after termination of that status, under regulations prescribed by the Secretaries concerned, with respect to incentive pay, considered to have satisfied the requirements of section 301 **or paragraph (2) of section 351(a)** of this title so as to entitle him to a continuance of that pay.

* * * * *

§ 907. Enlisted members and warrant officers appointed as officers: pay and allowances stabilized

(a) ***

* * * * *

(d)(1) In determining the amount of the pay and allowances of a grade formerly held by an officer, the following special and incentive pays may be considered only so long as the officer continues to perform the duty that creates the entitlement to, or eligibility for, that pay and would otherwise be eligible to receive that pay in the former grade:

- (A) Incentive pay for hazardous duty under section 301 or 351 of this title.
 - (B) Submarine duty incentive pay under section 301c or 352 of this title.
 - (C) Special pay for diving duty under section 304 or 353(a) of this title.
 - (D) Hardship duty pay under section 305 or 352 of this title.
 - (E) Career sea pay under section 305a or 352 of this title.
 - (F) Special pay for service as a member of a Weapons of Mass Destruction Civil Support Team under section 305b or 352 of this title.
 - (G) Assignment incentive pay under section 307a or 352 of this title.
 - (H) Special pay for duty subject to hostile fire or imminent danger under section 310 or 351 of this title.
 - (I) Special pay or bonus for an extension of duty at a designated overseas location under section 314 or 352 of this title.
 - (J) Foreign language proficiency pay under section ~~316~~ 353(b) of this title.
 - (K) Critical skill retention bonus under section ~~323~~ 355 of this title.
- (2) The following special and incentive pays are dependent on a member being in an enlisted status and may not be considered in determining the amount of the pay and allowances of a grade formerly held by an officer:
- (A) Special duty assignment pay under section 307 or 352 of this title.
 - (B) Reenlistment bonus under section ~~308~~ 331 of this title.
 - (C) Enlistment bonus under section ~~309~~ 331 of this title.
 - (D) Career enlisted flyer incentive pay under section 320 or 353 of this title.

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4. TITLE 42, UNITED STATES CODE

§ 210. Pay and allowances

(a) Commissioned officers of Regular and Reserve Corps; special pay for active duty; incentive special pay for Public Health Service nurses.

(1) Commissioned officers of the Regular and Reserve Corps shall be entitled to receive such pay and allowances as are now or may hereafter be authorized by law.

(2) For provisions relating to the receipt of special pay by commissioned officers of the Regular and Reserve Corps while on active duty, see section 303a(b) or 373 of title 37, United States Code.

* * * * *

TITLE VII—[RESERVED]

TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

Section 801, Subsection (f) of section 190 of title 10, United States Code, as added by section 820(b)(1) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328), should be repealed because of a significant number of unintended consequences that will result from the language included in that subsection.

When the Senate Armed Services Committee initially proposed the Defense Cost Accounting Standards Board, the committee indicated that the provisions were intended to address the Committee’s concerns that “the current cost accounting standards favor incumbent defense contractors and limit competition by serving as a barrier to participation by non-traditional, small business, and commercial contractors” and were intended also to “level the competitive playing field to access new sources of innovation” (S. Report 114-255, Section 811). Subsection (f) would require DCAA to rely on commercial audits for the indirect costs of companies that do not have a predominance of government cost type contracts.

While this provision was intended to remove barriers to non-traditional small businesses, some of the largest Defense contractors will also meet the criteria stated in this provision, and will therefore, not be subject to government audits of their indirect costs. For example, some of the top defense contractors (e.g., Raytheon Missile Systems, Lockheed Martin Aeronautics, Boeing Military Aircraft) performing contracts on major defense programs (e.g., F-35, Chinook, AMRAAM) would be permitted under this provision to have their indirect costs audited by a non-government independent public accountant (IPA). Based on Congress’ stated intent, it appears to be an unintended consequence that DCAA would be precluded from auditing the indirect costs of some of the largest Government contractors performing contracts across a broad spectrum of Government agencies.

This will have a major effect on the entire government acquisition system because the indirect cost audits are not only used by contracting officers for establishing final indirect rates for cost reimbursement and other flexibly priced contracts, but are also used for establishing forward pricing rates for all other contract types, including Firm Fixed-Price contracts.

In addition, subsection (f) will result in several unintended consequences negatively affecting industry and the DoD. The following are some of the unintended consequences of these provisions:

- *Annual Indirect Rate Determinations* – DCAA currently determines the annual indirect rates using auditor determined rates pursuant to FAR 42.705 and 42.705-2 for approximately 65 percent of all incurred cost audits. The determination of indirect rates involves “determining whether contract costs are reasonable, allocable and allowable” which FAR Subpart 7.503(c)(12)(vii) lists as an inherently governmental function. We do not believe that Congress’ intent was to contradict current laws defining inherently governmental functions established to protect the Government’s interests in settling final costs due to Government contractors.

- *Violates Professional Audit Standards* – Subsection (f) requires DCAA auditors to accept a summary of audit findings on indirect costs without performing additional audits. DCAA auditors cannot rely on the work of the IPA without performing additional steps to obtain an understanding of their professional competence, ethics and independence, and to evaluate whether their work is adequate for the purpose of the audit (AICPA Attestation Standards Clarified (AT-C) §105.31, §105.A58). Acceptance of the audit findings by DCAA auditors as required in subsection (f) would violate each auditor’s professional audit standards.
- *Increases the Number of Audits on Non-Traditional Small Businesses.* Due to DCAA Low Risk Audit Sampling Procedures, many small businesses are not audited every year. Based on DCAA’s continuing audit coverage, the sampling process allows DCAA to rely on its knowledge of the contractor and audit low risk contractors on a sampling basis. If these contractors hire an IPA to conduct their audit, they will be removed from the low risk sampling universe, and would therefore, be audited annually. Subsection (f) will therefore, increase overall costs to the Government, and subject some small businesses to more annual audits than there would have been if DCAA had been auditing the indirect rates.
- *Requires Multiple Audits*– DCAA currently audits indirect and direct costs within the same audit, and is the cognizant Government audit organization for many large contractors. If an IPA performs the audit of indirect costs as permitted under subsection (f), contractors will be subject to multiple audits by multiple audit organizations to accomplish the work that DCAA currently performs in one audit.
- *Eliminates Contracting Officer Audit Support for Indirect Rates* – After issuing an incurred cost audit report, DCAA currently assists the contracting officer in negotiating the final costs with the contractor. If the contractor hires an IPA to perform the audit of the indirect rate proposal, that IPA will be unable to support the contracting officer in negotiating the indirect rates resulting from the audit, as the IPA was not engaged by DoD to perform the audit. It would pose a conflict of interest for the IPA to assist the contracting officer in determining rates because the contracting officer’s interest would conflict with those of the IPA’s customer, the contractor. Additionally, DCAA would be unable to support the contracting officer in determining rates because the contractor was audited by another organization.
- *Permits the Use of Inappropriate Auditing and Accounting Standards* – Subsection (f) references an audit performed using relevant commercial accounting standards such as GAAP and other unnamed commercial audit and accounting standards. The use of GAAP alone would be inappropriate for performing audits of incurred cost proposals to determine whether the contractor has conformed to all legal and contractual requirements in its Government contracts. Commercial audits using only GAAP standards would fail to test the indirect costs for compliance with the terms of the contract such as CAS and the FAR cost principles, thus leaving Government agencies vulnerable to payment for unallowable costs. Additionally, without specifically requiring the audits to be

performed in compliance with Generally Accepted Government Auditing Standards, there is a risk that the amount of testing performed by the IPA may be inappropriate when performing audits of entities that receive government awards.

Overall, subsection (f) will result in significant unintended consequences that negatively affect industry and the DoD. It will result in a decrease of DCAA audits of some of DoD's largest contractors, which will put the Government at risk of payment of costs that Congress has previously indicated are unallowable, while also creating added burdens and inefficiencies for both contractors and Government agencies by requiring contractors to submit to multiple audits by different audit organizations.

The proposed repeal of the contractor's independent public accountant auditing provision at 10 U.S.C. 190(f) will not affect the current ability of the Government or agency contracting officer to engage audit services from a service provider other than DCAA.

Changes to Existing Law: This proposal would amend section 190 of title 10, United States Code, as follows:

§ 190. Defense Cost Accounting Standards Board

(a) ORGANIZATION.—The Defense Cost Accounting Standards Board is an independent board in the Office of the Secretary of Defense.

(b) MEMBERSHIP.—(1) The Board consists of seven members. One member is the Chief Financial Officer of the Department of Defense or a designee of the Chief Financial Officer, who serves as Chairman. The other six members, all of whom shall have experience in contract pricing, finance, or cost accounting, are as follows:

(A) Three representatives of the Department of Defense appointed by the Secretary of Defense; and

(B) Three individuals from the private sector, each of whom is appointed by the Secretary of Defense, and—

(i) one of whom is a representative of a nontraditional defense contractor (as defined in section 2302(9) of this title); and

(ii) one of whom is a representative from a public accounting firm.

(2) A member appointed under paragraph (1)(A) may not continue to serve after ceasing to be an officer or employee of the Department of Defense.

(c) DUTIES OF THE CHAIRMAN.—The Chief Financial Officer of the Department of Defense, after consultation with the Defense Cost Accounting Standards Board, shall prescribe rules and procedures governing actions of the Board under this section.

(d) DUTIES.—The Defense Cost Accounting Standards Board—

(1) shall review cost accounting standards established under section 1502 of title 41 and recommend changes to such cost accounting standards to the Cost Accounting Standards Board established under section 1501 of such title;

(2) has exclusive authority, with respect to the Department of Defense, to implement such cost accounting standards to achieve uniformity and consistency in the

standards governing measurement, assignment, and allocation of costs to contracts with the Department of Defense; and

(3) shall develop standards to ensure that commercial operations performed by Government employees at the Department of Defense adhere to cost accounting standards (based on cost accounting standards established under section 1502 of title 41 or Generally Accepted Accounting Principles) that inform managerial decisionmaking.

(e) COMPENSATION.—(1) Members of the Defense Cost Accounting Standards Board who are officers or employees of the Department of Defense shall not receive additional compensation for services but shall continue to be compensated by the Department of Defense.

(2) Each member of the Board appointed from the private sector shall receive compensation at a rate not to exceed the daily equivalent of the rate for level IV of the Executive Schedule for each day (including travel time) in which the member is engaged in the actual performance of duties vested in the Board. (3) While serving away from home or regular place of business, Board members and other individuals serving on an intermittent basis shall be allowed travel expenses in accordance with section 5703 of title 5.

~~(f) AUDITING REQUIREMENTS.—(1) Notwithstanding any other provision of law, contractors with the Department of Defense may present, and the Defense Contract Audit Agency shall accept without performing additional audits, a summary of audit findings prepared by a commercial auditor if—~~

~~(A) the auditor previously performed an audit of the allowability, measurement, assignment to accounting periods, and allocation of indirect costs of the contractor; and~~

~~(B) such audit was performed using relevant commercial accounting standards (such as Generally Accepted Accounting Principles) and relevant commercial auditing standards established by the commercial auditing industry for the relevant accounting period.~~

~~(2) The Defense Contract Audit Agency may audit direct costs of Department of Defense cost contracts and shall rely on commercial audits of indirect costs without performing additional audits, except that in the case of companies or business units that have a predominance of cost-type contracts as a percentage of sales, the Defense Contract Audit Agency may audit both direct and indirect costs.~~

TITLE IX—[RESERVED]

TITLE X—GENERAL PROVISIONS

Section 1001, the Federal Facility Agreement (FFA) for Longhorn Army Ammunition Plant provides that any stipulated penalty assessed by the Environmental Protection Agency (EPA) may only be paid after specific authorization by law. In addition, 10 U.S.C. 2703(f) specifically requires such authorization by law.

Subsection (a) of the proposal would authorize the Secretary of the Army to transfer funds to the Hazardous Substance Superfund.

Subsection (b) of the proposal would specify that the payment is for a stipulated penalty assessed by the EPA against the Army pursuant to the FFA for Longhorn.

Subsection (c) of the proposal would provide that the payment authorized under subsection (a) constitutes full payment in satisfaction of the penalty referred to in subsection (b).

Budget Implications: The resources reflected in the table below are funded within the Fiscal Year (FY) 2018 President’s Budget.

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Army	1.185	0	0	0	0	Environmental Restoration, Army	01	493	0708008A
Total	1.185					--	--	--	--

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

Section 1002, the Federal Facility Agreement (FFA) for the Umatilla Chemical Depot provides that any stipulated penalty assessed by the Environmental Protection Agency (EPA) may only be paid after specific authorization by law. In addition, 10 U.S.C. 2703(f) specifically requires such authorization by law.

Subsection (a) of the proposal would authorize the Secretary of the Army to transfer funds to the Hazardous Substance Superfund.

Subsection (b) of the proposal would specify that the payment is for a stipulated penalty assessed by the EPA against the Army pursuant to the FFA for the Umatilla Chemical Depot. This stipulated penalty was assessed by the EPA against the Army for missing the deadline for submitting a complete draft final Remedial Action Completion Report by April 18, 2015, as specified in the Remedial Design/Remedial Action Workplan, dated February 2014, due to a contract termination caused by the contractor hired to perform the work specified being unable to complete the work. Missing this report submittal resulted in EPA issuing the Army a Notice of Violation in November 2015, and then negotiating the settlement specified in the settlement agreement that was approved and signed by the Army and EPA in July 2016.

Subsection (c) of the proposal would provide that the payment authorized under subsection (a) constitutes full payment in satisfaction of the penalty referred to in subsection (b).

Budget Implications: The table below details resource requirements associated with this proposal. The resources reflected in the table below are funded from within the Fiscal Year (FY) 2018 President’s Budget.

RESOURCE REQUIREMENTS (\$THOUSANDS)									
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element

Army	125	0	0	0	0	Base Realignment and Closure, Army	01	N/A	900006000
Total	125	0	0	0	0	--	--	--	--

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

Section 1003 would amend section 130e of title 10, United States Code (U.S.C.), to authorize the Department of Defense to withhold sensitive, but unclassified, military tactics, techniques, or procedures, and military rules of engagement, from release to the public under section 552 of title 5, U.S.C. (known as the Freedom of Information Act (FOIA)).

The decision of the Supreme Court in *Milner v. Department of the Navy*, 131 S. Ct. 1259 (2011), significantly narrowed the long-standing administrative understanding of the scope of Exemption 2 of the FOIA (5 U.S.C. 552(b)(2)). Before that decision, the Department was authorized to withhold sensitive information on critical infrastructure and military tactics, techniques, and procedures from release under FOIA pursuant to Exemption 2. Section 130e of title 10, U.S.C., was established in the National Defense Authorization Act for Fiscal Year 2012 to reinstate protection of critical infrastructure security information. This proposal would amend the existing infrastructure provision to add protections for military tactics, techniques, and procedures (TTPs), and rules of engagement. Military TTPs and rules of engagement are analogous to law enforcement techniques and procedures, which Congress has afforded protection under FOIA Exemption 7(E).

The effectiveness of United States military operations is dependent upon adversaries, or potential adversaries, not having advance knowledge of TTPs or rules of engagement that will be employed in such operations. If an adversary or potential adversary has knowledge of this information, the adversary will gain invaluable knowledge on how our forces operate in given situations. This knowledge could then, in turn, enable the adversary to counter the TTPs or rules of engagement by identifying and exploiting any weaknesses. From this, the defense of the homeland, success of the operation, and the lives of U.S. military forces will be seriously jeopardized.

This proposal additionally would make minor amendments in section 130e to: (1) clarify the citation for the purposes of the OPEN FOIA Act of 2009; (2) remove references to reflect the merger of the Director of Administration and Management with the Deputy Chief Management Officer of the Department of Defense; and (3) remove the prohibition on further delegation.

Budget Implications: Exemptions for the release of certain information under FOIA would generate minimal savings to the Administration by avoiding the preparation of select materials for release. The resources reflected in the table below are funded within the FY 2018 President’s Budget.

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriations From	Budget Activity	Dash-1 Line	Program Element

								Item	
FOIA Cost Avoidance Army	\$-.001	\$-.001	\$-.001	\$-.001	\$-.001	Operation and Maintenance, Army	Various	Various	Various
FOIA Cost Avoidance Navy	\$-.001	\$-.001	\$-.001	\$-.001	\$-.001	Operation and Maintenance, Navy	Various	Various	Various
FOIA Cost Avoidance Air Force	\$-.001	\$-.001	\$-.001	\$-.001	\$-.001	Operation and Maintenance, Air Force	Various	Various	Various
FOIA Cost Avoidance Defense-Wide	\$-.001	\$-.001	\$-.001	\$-.001	\$-.001	Operation and Maintenance, Defense-Wide	Various	Various	Various
Total	\$-.004	\$-.004	\$-.004	\$-.004	\$-.004	--	--	--	--

Changes to Existing Law: The proposal would make the following changes to existing law:

TITLE 10, UNITED STATES CODE

CHAPTER 3—General Power and Functions

- 130. Authority to withhold from public disclosure certain technical data.
[130a. Repealed.]
- 130b. Personnel in overseas, sensitive, or routinely deployable units: nondisclosure of personally identifying information.
- 130c. Nondisclosure of information: certain sensitive information of foreign governments and international organizations.
- 130d. Treatment under Freedom of Information Act of certain confidential information shared with State and local personnel.
- 130e. ~~Treatment under Freedom of Information Act of critical infrastructure security information~~Nondisclosure of information: critical infrastructure; military tactics, techniques, and procedures; military rules of engagement.
- 130f. Congressional notification regarding sensitive military operations.

§130e. Treatment under Freedom of Information Act of critical infrastructure security informationNondisclosure of information: critical infrastructure; military tactics, techniques, and procedures; military rules of engagement

(a) EXEMPTION.—The Secretary of Defense may exempt Department of Defense critical infrastructure security information, military tactic, technique, or procedure information, or rule of engagement information from disclosure pursuant to section 552(b)(3) of title 5, upon a written determination that—

- (1) the information is—
 - (A) Department of Defense critical infrastructure security information;

(B) military tactic, technique, or procedure information which identifies a method for using equipment and personnel to accomplish a specific mission under a particular set of operational or exercise conditions, including offensive, defensive, stability, civil support, freedom of navigation, and intelligence collection operations, the public disclosure of which could reasonably be expected to provide an operational military advantage to an adversary; or

(C) rule of engagement information, the public disclosure of which could reasonably be expected to provide an operational military advantage to an adversary; and

(2) the public interest consideration in the disclosure of such information does not outweigh preventing the disclosure of such information.

(b) DESIGNATION OF DEPARTMENT OF DEFENSE CRITICAL INFRASTRUCTURE SECURITY INFORMATION.—In addition to any other authority or requirement regarding protection from dissemination of information, the Secretary may designate information as being Department of Defense critical infrastructure security information, including during the course of creating such information, to ensure that such information is not disseminated without authorization. Information so designated is subject to the determination process under subsection (a) to determine whether to exempt such information from disclosure described in such subsection.

(c) INFORMATION PROVIDED TO STATE AND LOCAL GOVERNMENTS.—(1) Department of Defense critical infrastructure security information covered by a written determination under subsection (a) or designated under subsection (b) that is provided to a State or local government shall remain under the control of the Department of Defense.

(2)(A) A State or local law authorizing or requiring a State or local government to disclose Department of Defense critical infrastructure security information that is covered by a written determination under subsection (a) shall not apply to such information.

(B) If a person requests pursuant to a State or local law that a State or local government disclose information that is designated as Department of Defense critical infrastructure security information under subsection (b), the State or local government shall provide the Secretary an opportunity to carry out the determination process under subsection (a) to determine whether to exempt such information from disclosure pursuant to subparagraph (A).

~~(d) DELEGATION.—The Secretary of Defense may delegate the authority to make a determination under subsection (a) to the Director of Administration and Management.~~

~~(e) TRANSPARENCY.—Each determination of the Secretary, or the Secretary's designee, under subsection (a) shall be made in writing and accompanied by a statement of the basis for the determination. All such determinations and statements of basis shall be available to the public, upon request, though the Office of the Director of Administration and Management in accordance with guidelines prescribed by the Secretary.~~

(e) CITATION FOR PURPOSES OF OPEN FOIA ACT OF 2009.—This section is a statute that specifically exempts certain matters from disclosure under section 552 of title 5, as described in subsection (b)(3) of that section.

(f) DEFINITIONS.—In this section, ~~t~~:

(1) ADVERSARY.—The term “adversary” means a party acknowledged as potentially hostile to a friendly party and against which the use of force may be envisaged.

(2) DEPARTMENT OF DEFENSE CRITICAL INFRASTRUCTURE SECURITY INFORMATION.—The term “Department of Defense critical infrastructure security

information” means sensitive but unclassified information that, if disclosed, would reveal vulnerabilities in Department of Defense critical infrastructure that, if exploited, would likely result in the significant disruption, destruction, or damage of or to Department of Defense operations, property, or facilities, including—

(A) information regarding the securing and safeguarding of explosives, hazardous chemicals, or pipelines, related to critical infrastructure or protected systems owned or operated by or on behalf of the Department of Defense;

(B) ~~including~~ vulnerability assessments prepared by or on behalf of the Department of Defense;

(C) explosives safety information, (including storage and handling information); and

(D) other site-specific information on or relating to installation security.

(3) PROCEDURE.—The term “procedure” means standard, detailed steps that prescribe how to perform a specific task.

(4) RULE OF ENGAGEMENT.—The term “rule of engagement” means a directive issued by a competent military authority that delineates the circumstances and limitations under which the armed forces will initiate or continue combat engagement with other forces encountered.

(5) TACTIC.—The term “tactic” means the employment and ordered arrangement of forces in relation to each other.

(6) TECHNIQUE.—The term “technique” means a non-prescriptive way or method used to perform a mission, function, or task.

Section 1004 would amend section 2218 of title 10, United States Codes, to provide the Secretary of Defense with the discretionary authority to purchase used vessels as part of a program to recapitalize the surge sealift capability in the Ready Reserve Force component of the National Defense Reserve Fleet (NDRF) and the Military Sealift Command’s surge fleet.

The Department of Defense (DoD) has developed a hybrid recapitalization strategy of new construction (long term), extending the service life of certain vessels (short term) and acquiring used vessels in order to maintain capacity at an acceptable level of risk.

There are a number of auxiliary and sealift vessels that are approaching the end of their service life. The new construction phase of the strategy is the delivery of a common hull vessel that will provide the capabilities of the current auxiliary and sealift fleets. The development of the requirement, as well as design process, will drive an anticipated first delivery in the late 2020’s. Actions must be taken sooner to maintain an acceptable level of risk in surge sealift capacity.

The current average age of the vessels in the Ready Reserve portion of the NDRF and the Military Sealift Command’s surge fleet is 39 years. The fleets are comprised of many different ship classes, several different propulsion systems, and United States (U.S.) and foreign-constructed vessels. The cost of maintaining this aging fleet is increasing as maintenance and repair actions are becoming more challenging due to lack of availability of spare parts and the general wear and tear on the vessels over time. Service life extensions to the 60 year point are

being pursued but the limit of safely operating these vessels at reasonable cost is becoming apparent.

This proposal facilitates one portion of the overall strategy by permitting the Secretary of Defense to purchase used vessels, regardless of where constructed, from those previously participating in the Maritime Security Fleet (MSF). MSF vessels are privately owned, U.S.-flagged vessels that are made available to the DoD, when required, pursuant to operating agreements with the DoD under the Maritime Security Program. These vessels are part of the DoD’s transportation solution to meet military mobility requirements and are full partners in the movement of military equipment. When not required for DoD use, these vessels are commercially operated. Currently, the vessels must normally be removed from the program and replaced by the commercial operator when the vessel reaches 25 years of age. As these vessels reach the end of their useful commercial life and are retired by their operators, they still have substantial service life available, making them excellent candidates for the Ready Reserve Force and the Military Sealift Command surge fleet. Allowing these vessels to be acquired and to replace vessels in the organic surge fleet will strengthen both the DOD surge capability and the commercial U.S.-flagged fleet by reducing the age of both components of this vital mobility solution. The first vessel becomes available as early as 2018.

This legislative proposal would create an exemption from section 2218’s requirement that funds in the National Defense Sealift Fund may only be used to purchase vessels constructed in U.S. shipyards, by allowing the Secretary of Defense to purchase former MSF vessels if they are available at a reasonable cost. In order to encourage MSF vessel operators to offer such vessels at a reasonable cost, the proposal also permits the Secretary to turn to other commercial sources for comparable vessels, if the Secretary determines that former MSF vessels are not available at a reasonable cost.

Budget Implications: If enacted this proposal would not increase the budgetary requirements of the DoD. Funds to purchase the used vessels authorized by this proposal would be included as part of the Department of Navy’s budget submissions for the National Defense Sealift Fund after completion of market surveys and business case assessments. Final budget estimates will be highly dependent on availability of suitable ships, market conditions, material condition, size, and overall military utility.

RESOURCE REQUIREMENTS (\$MILLIONS)+									
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation To	Budget Activity	Dash-1 Line Item	Program Element
Army	+0	+0	+0	+0	+0	Operations & Maintenance, Army			
Navy	+0	+0	+0	+0	+0	National Defense Sealift Fund, Navy			

Marine Corps	+0	+0	+0	+0	+0	Operations & Maintenance, Marine Corps			
Coast Guard	+0	+0	+0	+0	+0	Operations & Maintenance, Coast Guard			
Air Force	+0	+0	+0	+0	+0	Operations & Maintenance, Air Force			
DOD	+0	+0	+0	+0	+0	Transportation Working Capital Funds			

NUMBER OF PERSONNEL AFFECTED							
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	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		

Changes to Existing Law: This proposal would make the following changes to section 2218 of title 10, United States Code:

§ 2218. National Defense Sealift Fund

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the “National Defense Sealift Fund”.

(b) ADMINISTRATION OF FUND.—The Secretary of Defense shall administer the Fund consistent with the provisions of this section.

(c) FUND PURPOSES.—(1) Funds in the National Defense Sealift Fund shall be available for obligation and expenditure only for the following purposes:

(A) Construction (including design of vessels), purchase, alteration, and conversion of Department of Defense sealift vessels.

(B) Operation, maintenance, and lease or charter of Department of Defense vessels for national defense purposes.

(C) Installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States.

(D) Research and development relating to national defense sealift.

(E) Expenses for maintaining the National Defense Reserve Fleet under section 11 of the Merchant Ship Sales Act of 1946 (~~50 U.S.C. App. 1744~~) (50 U.S.C. 4405), and for the costs of acquisition of vessels for, and alteration and conversion of vessels in (or to be placed in), the fleet, but only for vessels built in United States shipyards.

(2) Funds in the National Defense Sealift Fund may be obligated or expended only in amounts authorized by law.

(3) Funds obligated and expended for a purpose set forth in subparagraph (B) or (D) of paragraph (1) may be derived only from funds deposited in the National Defense Sealift Fund pursuant to subsection (d)(1).

(d) DEPOSITS.—There shall be deposited in the Fund the following:

(1) All funds appropriated to the Department of Defense for—

(A) construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(B) operations, maintenance, and lease or charter of national defense sealift vessels;

(C) installation and maintenance of defense features for national defense purposes on privately owned and operated vessels; and

(D) research and development relating to national defense sealift.

(2) All receipts from the disposition of national defense sealift vessels, excluding receipts from the sale, exchange, or scrapping of National Defense Reserve Fleet vessels under sections 57101–57104 and chapter 573 of title 46.

(3) All receipts from the charter of vessels under section 1424(c) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note).

(e) ACCEPTANCE OF SUPPORT.—(1) The Secretary of Defense may accept from any person, foreign government, or international organization any contribution of money, personal property (excluding vessels), or assistance in kind for support of the sealift functions of the Department of Defense.

(2) Any contribution of property accepted under paragraph (1) may be retained and used by the Department of Defense or disposed of in accordance with procedures prescribed by the Secretary of Defense.

(3) The Secretary of Defense shall deposit in the Fund money and receipts from the disposition of any property accepted under paragraph (1).

(f) LIMITATIONS.—(1) A vessel built in a foreign ship yard may not be purchased with funds in the National Defense Sealift Fund pursuant to subsection (c)(1), unless specifically authorized by law.

(2) Construction, alteration, or conversion of vessels with funds in the National Defense Sealift Fund pursuant to subsection (c)(1) shall be conducted in United States ship yards and shall be subject to section 1424(b) of Public Law 101-510 (104 Stat. 1683).

(3) Notwithstanding the limitations in subsections (c)(1)(E) and (f)(1), the Secretary of Defense may, as part of a program to recapitalize the Ready Reserve Force component of the National Defense Reserve Fleet and the Military Sealift Command surge fleet, purchase used vessels, regardless of where constructed, from among those vessels previously participating in

the Maritime Security Fleet, if available at a reasonable cost, as determined by the Secretary of Defense. If those previously participating vessels are not available at a reasonable cost, used vessels comparable to those previously participating vessels may be purchased from any source, regardless of where constructed, if available at a reasonable cost, as determined by the Secretary of Defense.

(g) EXPIRATION OF FUNDS AFTER 5 YEARS.—No part of an appropriation that is deposited in the National Defense Sealift Fund pursuant to subsection (d)(1) shall remain available for obligation more than five years after the end of fiscal year for which appropriated except to the extent specifically provided by law.

(h) BUDGET REQUESTS.—Budget requests submitted to Congress for the National Defense Sealift Fund shall separately identify—

(1) the amount requested for programs, projects, and activities for construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(2) the amount requested for programs, projects, and activities for operation, maintenance, and lease or charter of national defense sealift vessels;

(3) the amount requested for programs, projects, and activities for installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States; and

(4) the amount requested for programs, projects, and activities for research and development relating to national defense sealift.

(i) TITLE OR MANAGEMENT OF VESSELS.—Nothing in this section (other than subsection (c)(1)(E)) shall be construed to affect or modify title to, management of, or funding responsibilities for, any vessel of the National Defense Reserve Fleet, or assigned to the Ready Reserve Force component of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (~~50 U.S.C. App. 1744~~) (50 U.S.C. 4405).

(j) CONTRACTS FOR INCORPORATION OF DEFENSE FEATURES IN COMMERCIAL VESSELS.—
(1) The head of an agency may enter into a contract with a company submitting an offer for that company to install and maintain defense features for national defense purposes in one or more commercial vessels owned or controlled by that company in accordance with the purpose for which funds in the National Defense Sealift Fund are available under subsection (c)(1)(C). The head of the agency may enter into such a contract only after the head of the agency makes a determination of the economic soundness of the offer. As consideration for a contract with the head of an agency under this subsection, the company entering into the contract shall agree with the Secretary of Defense to make any vessel covered by the contract available to the Secretary, fully crewed and ready for sea, at any time at any port determined by the Secretary, and for whatever duration the Secretary determines necessary.

(2) The head of an agency may make advance payments to the contractor under a contract under paragraph (1) in a lump sum, in annual payments, or in a combination thereof for costs associated with the installation and maintenance of the defense features on a vessel covered by the contract, as follows:

(A) The costs to build, procure, and install a defense feature in the vessel.

(B) The costs to periodically maintain and test any defense feature on the vessel.

(C) Any increased costs of operation or any loss of revenue attributable to the installation or maintenance of any defense feature on the vessel.

(D) Any additional costs associated with the terms and conditions of the contract.

(E) Payments of such sums as the Government would otherwise expend, if the vessel were placed in the Ready Reserve Fleet, for maintaining the vessel in the status designated as “ROS-4 status” in the Ready Reserve Fleet for 25 years.

(3) For any contract under paragraph (1) under which the United States makes advance payments under paragraph (2) for the costs associated with installation or maintenance of any defense feature on a commercial vessel, the contractor shall provide to the United States such security interests in the vessel, by way of a preferred mortgage under section 31322 of title 46 or otherwise, as the head of the agency may prescribe in order to adequately protect the United States against loss for the total amount of those costs.

(4) Each contract entered into under this subsection shall—

(A) set forth terms and conditions under which, so long as a vessel covered by the contract is owned or controlled by the contractor, the contractor is to operate the vessel for the Department of Defense notwithstanding any other contract or commitment of that contractor; and

(B) provide that the contractor operating the vessel for the Department of Defense shall be paid for that operation at fair and reasonable rates.

(5) The head of an agency may not delegate authority under this subsection to any officer or employee in a position below the level of head of a procuring activity.

(6) The head of an agency may not enter into a contract under paragraph (1) that would provide for payments to the contractor as authorized in paragraph (2)(E) until notice of the proposed contract is submitted to the congressional defense committees and a period of 90 days has elapsed.

(k) DEFINITIONS.—In this section:

(1) The term “Fund” means the National Defense Sealift Fund established by subsection (a).

(2) The term “Department of Defense sealift vessel” means any ship owned, operated, controlled, or chartered by the Department of Defense that is any of the following:

(A) A fast sealift ship, including any vessel in the Fast Sealift Program established under section 1424 of Public Law 101-510 (104 Stat. 1683).

(B) Any other auxiliary vessel that was procured or chartered with specific authorization in law for the vessel, or class of vessels, to be funded in the National Defense Sealift Fund.

(3) The term “national defense sealift vessel” means—

(A) a Department of Defense sealift vessel; and

(B) a national defense reserve fleet vessel, including a vessel in the Ready Reserve Force maintained under section 11 of the Merchant Ship Sales Act of 1946 (~~50 U.S.C. App. 1744~~) (50 U.S.C. 4405).

(4) The term “head of an agency” has the meaning given that term in section 2302(1) of this title.

(5) The term “Maritime Security Fleet” means the fleet established under section 53102(a) of title 46.

Section 1005, The Department of Defense (DOD) unobligated balances of amounts made available from the Spectrum Relocation Fund (SRF) are subject to sequestration pursuant to section 251A of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA).

The SRF funds pay the relocation or sharing costs incurred from a Federal entity's relocation from or sharing of those frequencies that are auctioned by the Federal Government. Pursuant to section 251A of BBEDCA (2 U.S.C. 901a), and as outlined in the annual Report to Congress on Joint Committee Sequestration, funds are sequestered in the SRF. If funds remain unobligated in Defense accounts, they are subject to further sequestration. DOD has worked with the Office of Management and Budget (OMB) to transfer only funds needed in the year the funds are expected to be obligated, and provides Congress with the annual plan. In the event that amounts are estimated incorrectly or DOD is unable to obligate funds, remaining balances would be sequestered. This proposal would provide DOD flexibility to plan and obligate these no-year funds as intended by Congress for spectrum relocation projects that span many fiscal years.

Budget Implications: None. DOD currently works with OMB to transfer only amounts anticipated for obligation in that year.

Changes to Existing Law: This proposal would make the following changes to section 255 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905):

SEC. 255. EXEMPT PROGRAMS AND ACTIVITIES.

(g) Other Programs and Activities.—

(1)(A) The following budget accounts and activities shall be exempt from reduction under any order issued under this subchapter:

Continuing Fund, Southwestern Power Administration (89–5649–0–2–271).

Department of Defense unobligated balances carried over from prior fiscal years from amounts made available from the Spectrum Relocation Fund (011–5512–0–2–376).

Dual Benefits Payments Account (60–0111–0–1–601).

TITLE XI—CIVILIAN PERSONNEL MATTERS

Section 1101 has been a recurring provision for the last several years and is an extension for one additional year of the authority under section 1101 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009, as amended by subsequent NDAA's, most recently section 1137 of the FY 2017 NDAA. The provision is currently in effect

through calendar year 2017. The authority under that section is similar to that previously provided in the NDAA's since FY 2006.

This proposal would provide the head of a Federal executive agency with the authority to waive the limitations on the amount of premium pay that may be paid to a Federal civilian employee while the employee performs work in a foreign country or other foreign geographic area outside of the United States that is designated by the Secretary of State, in coordination with the Secretary of Defense, as an area in which there are exceptional levels of armed violence. In making such a designation, the Secretary of State may consider: whether the Armed Forces of the United States are involved in hostilities in the country or area; whether the incidence of civil insurrection, civil war, terrorism, or wartime conditions threatens physical harm or imminent danger to the health or well-being of United States civilian employees in the country or area; whether the country or area has been designated a combat zone by the President under section 112(c) of the Internal Revenue Code of 1986; whether a contingency operation involving combat operations directly affects civilian employees in the country or area; and any other relevant conditions and factors.

Under the law generally applicable to premium pay for Federal civilian employees (section 5547 of title 5, United States Code (U.S.C.)), premium pay may be paid to an employee only to the extent that the payment does not cause the aggregate of basic pay and premium pay for any pay period to exceed the greater of the maximum rate of basic pay payable for General Schedule-15 (GS-15), as adjusted for locality, or the rate payable for Level V of the Executive Schedule. Extending the authority under section 1101(a) of the FY 2009 NDAA would allow a Federal agency head, during calendar year 2018, to waive the limitations in section 5547 and pay premium pay to a Federal civilian employee performing work in an overseas location, as described above, to the extent that the payment does not cause the aggregate of basic pay and premium pay to exceed the annual rate of salary payable to the Vice President under section 104 of title 3, United States Code, in a calendar year.

Budget Implications: The Department of Defense estimates this proposal would cost \$3.664 million for FY 2018. This proposal would be funded from the Component and Defense Agency operation and maintenance fund accounts. The limitation relief is for those people who are deployed with regard to the Overseas Contingency Operations (OCO) in Iraq and Afghanistan. The funding is requested in the military departments' Operation and Maintenance OCO budgets by cost breakdown structure category. The number of personnel affected in FY 2017 was approximately 2,760. The number of affected personnel Defense-wide in FY 2018 is estimated to be the same. The resources reflected in the table below are funded within the FY18 President's Budget. Only Defense Agencies that anticipate having employees assigned to areas covered by this authority are identified in the budget table below.

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Army	2.979					Operation and Maintenance, Army	01	135	0201195A

						OCO			
Navy	\$0.243					Operation and Maintenance, Navy OCO	01	OCO-Civ Pay	
Air Force	\$0.189					Operation and Maintenance, Air Force OCO	01	OCO-Civ Pay	
DLA	.14					Operation and Maintenance, OCO	03	OCO-Civ Pay	
DCM A	.06					Operation and Maintenance, OCO		OCO-Civ Pay	
DISA	.023					Operation and Maintenance, OCO		OCO-Civ Pay	
DCAA	.006					Operation and Maintenance, OCO		OCO-Civ Pay	
OSD	.01					Operation and Maintenance, OCO		OCO-Civ Pay	
DFAS	.005					Operation and Maintenance, OCO		OCO-Civ Pay	
DTRA	.003					Operation and Maintenance, OCO		OCO-Civ Pay	
WHS	.002					Operation and Maintenance, OCO		OCO-Civ Pay	
Joint Staff	.002					Operation and Maintenance, OCO		OCO-Civ Pay	
DTSA	.002					Operation and Maintenance, OCO		OCO-Civ Pay	
Total	\$3.664								

Cost Methodology: The cost of this proposal will ultimately be determined by the number of employees affected, the basic pay of each employee (which varies by grade, step, and location), and the number of hours of overtime worked by each employee. Based on available payroll data for eligible employees in 2016 the additional cost for overtime in excess of the annual premium pay limitation was approximately \$3.7 million. The actual numbers of employees, their salaries, and the length of time additional overtime might be required are based on mission needs in FY 2018, but the above scenario illustrates the potential impact, and is a reasonable estimate given the relatively stable rate of assignment of employees over the last several years.

Changes to Existing Law: This proposal would amend section 1101(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4615), as amended, as follows:

SEC. 1101. AUTHORITY TO WAIVE ANNUAL LIMITATION ON PREMIUM PAY AND AGGREGATE LIMITATION ON PAY FOR FEDERAL CIVILIAN EMPLOYEES WORKING OVERSEAS.

(a) WAIVER AUTHORITY.—During calendar years 2009 through ~~2017~~ 2018, and notwithstanding section 5547 of title 5, United States Code, the head of an Executive agency may waive the premium pay limitations established in that section up to the annual rate of salary payable to the Vice President under section 104 of title 3, United States Code, for an employee who performs work while in an overseas location that is in the area of responsibility of the Commander of the United States Central Command, or an overseas location that was formerly in the area of responsibility of the Commander of the United States Central Command but has been moved to the area of responsibility of the Commander of the United States Africa Command, in direct support of, or directly related to—

- (1) a military operation, including a contingency operation; or
- (2) an operation in response to a national emergency declared by the President.

* * * * *

TITLE XII—MATTERS RELATING TO FOREIGN NATIONS

Section 1201 would authorize \$4,937,515,000 for the Afghanistan Security Forces Fund (ASFF) for fiscal year (FY) 2018 and continue certain established provisions applicable to the ASFF, including use of the funds, transfer authority, and acceptance of contributions, to provide assistance to the security forces of Afghanistan, including the provision of equipment, supplies, services, training, and funds and developing the capacity of Afghanistan’s security ministries to maintain an advantage over a resilient insurgency and terrorist groups seeking to maintain safe havens in Afghanistan. This topline increase is driven in large part by the Afghan Aviation Recapitalization Program, increased costs of aviation contractor life support, HMMWV recapitalization, and various costs associated with the force manning level change.

ASFF funding is necessary to attain U.S. national objectives in Afghanistan and provide the United States contribution to an international effort to meet the funding requirements of the Afghan forces; at the NATO Summit in Warsaw in July 2016, other donor nations committed to providing \$1 billion toward the annual cost of security, and the Afghan government has committed to continued increases in the amount of funding it provides. Continued ASFF authority and appropriations support the United States strategy in Afghanistan to work with Allies and partners to enable well-trained, well-equipped, and sustainable Afghan security forces to provide security in Afghanistan and continue efforts to defeat the remnants of al Qaeda, the Islamic State and other terrorist organizations to ensure Afghanistan does not again become a safe haven for terrorist groups to plan and execute attacks against United States interests. Effective Afghan forces minimize the need to reintroduce US and coalition forces to conduct counterinsurgency operations. We will continue to execute ASFF through Financial and Activity Plans and the Afghanistan Resources Oversight Council to ensure the Department of Defense and Congress maintain control and oversight over these funds.

This funding supports operations by and sustainment of Afghan National Defense and Security Forces at an authorized level of 352,000 plus 30,000 Afghan Local Police to enhance the security and stability of Afghanistan by protecting the population, fostering the rule of law,

preventing the establishment of terrorist safe havens and developing a reliable long-term counterterrorism partnership with the United States.

Budget Implications: The resources reflected in the table below are funded within the FY 2018 President's Overseas Contingency Operations (OCO) Budget request.

RESOURCE REQUIREMENTS (\$MILLIONS)							
	FY 2018	FY 2019	FY 2020	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
ASFF	\$4,937,515			Afghanistan Security Forces Fund	01	ASFF	
Total	\$4,937,515						

Changes to Existing Law: This proposal would make no changes to the text of existing law.

Section 1202 would extend the ability of the Secretary of Defense, with the concurrence of the Secretary of State, to enter into cost-sharing agreements with countries participating in the land-force program known as the American, British, Canadian, and Australian Armies' Program (ABCA Armies' Program), and for the program to be managed pursuant to a joint agreement among the participating countries until January 2, 2023. Extension of this authority is necessary to continue cooperative exchanges of military information and military exercises by providing the necessary statutory exception to the miscellaneous receipts statute (31 U.S.C. 3301(b)) to ensure that any contributions collected from the participating nations are deposited into Department of Defense accounts. It is critical for this proposal to be enacted this cycle, so that the Army can finalize a cost-sharing agreement among member nations of the ABCA Armies' program office. Currently, the other member nations provide their participating personnel with associated expenses (lodging, salary, etc.) but currently cannot contribute payments to the United States to operate the ABCA program office.

Budget Implications: An ABCA Armies' Program with a multinational program office is already in existence under the Basic Standardization Agreement of 1964. The Army has programmed and budgeted, and will continue to program and budget, to pay its equitable share of program costs as identified below. However, the Army is negotiating one agreement under the authority, which, if finalized, would facilitate cost-sharing among member nations of the ABCA Armies' program office, ensuring that the United States may accept contributions for the operation of that office and pay only its equitable share, instead of the full cost for operation and maintenance of the office, with a potential to reduce costs to \$280,000 Fiscal Year (FY) 2018 - \$301,000 FY 2022. The Army budgeted in anticipation of partner contributions in the future (see table). The resources reflected in the table below are funded within the FY 2018 President's Budget.

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element

	.085	.080	.075	.069	.064	Operation and Maintenance, Army	01	121	0202214A
Total	.085	.080	.075	.069	.065				

Changes to Existing Law: This proposal would make the following change to section 1274 of the National Defense Authorization Act for Fiscal Year 2013 (10 U.S.C. 2350a note):

SEC. 1274. ADMINISTRATION OF THE AMERICAN, BRITISH, CANADIAN, AND AUSTRALIAN ARMIES' PROGRAM.

(a) **AUTHORITY.**—As part of the participation by the United States in the land-force program known as the American, British, Canadian, and Australian Armies' Program (in this section referred to as the 'Program'), the Secretary of Defense may, with the concurrence of the Secretary of State, enter into agreements with the other participating countries in accordance with this section, and the Program shall be managed pursuant to a joint agreement among the participating countries.

(b) **PARTICIPATING COUNTRIES.**—In addition to the United States, the countries participating in the Program are the following:

- (1) Australia.
- (2) Canada.
- (3) New Zealand.
- (4) The United Kingdom.

(c) **CONTRIBUTIONS BY PARTICIPANTS.**—

(1) **IN GENERAL.** An agreement under subsection (a) shall provide that each participating country shall contribute to the Program—

(A) its equitable share of the full cost for the Program, including the full cost of overhead and administrative costs related to the Program; and

(B) any amount allocated to it in accordance with the agreement for the cost for monetary claims asserted against any participating country as a result of participation in the Program.

(2) **ADDITIONAL AUTHORIZED CONTRIBUTION.**—Such an agreement shall also provide that each participating country (including the United States) may provide its contribution for its equitable share under the agreement in funds, in personal property, or in services required for the Program (or in any combination thereof).

(3) **FUNDING FOR UNITED STATES CONTRIBUTION.**—Any contribution by the United States to the Program that is provided in funds shall be made from funds available to the Department of Defense for operation and maintenance.

(4) **TREATMENT OF CONTRIBUTIONS RECEIVED FROM OTHER COUNTRIES.**—Any contribution received by the United States from another participating country to meet that country's share of the costs of the Program shall be credited to appropriations available to the Department of Defense, as determined by the Secretary of Defense. The amount of a contribution credited to an appropriation account in connection with the Program shall be available only for payment of the share of the Program expenses allocated to the participating country making the contribution. Amounts so credited shall be available for the following purposes:

(A) Payments to contractors and other suppliers (including the Department of Defense and participating countries acting as suppliers) for necessary goods and services of the Program.

(B) Payments for any damages and costs resulting from the performance or cancellation of any contract or other obligation in support of the Program.

(C) Payments for any monetary claim against a participating country as a result of the participation of that country in the Program.

(D) Payments or reimbursements of other Program expenses, including overhead and administrative costs for any administrative office for the Program.

(E) Refunds to other participating countries.

(5) COSTS OF OPERATION OF OFFICES ESTABLISHED FOR PROGRAM.—Costs for the operation of any office established to carry out the Program shall be borne jointly by the participating countries as provided for in an agreement referred to in subsection (a).

(d) AUTHORITY TO CONTRACT FOR PROGRAM ACTIVITIES.—As part of the participation by the United States in the Program, the Secretary of Defense may enter into contracts or incur other obligations on behalf of the other participating countries for activities under the Program. Any payment for such a contract or other obligation under this subsection may be paid only from contributions credited to an appropriation under subsection (c)(4).

(e) DISPOSAL OF PROPERTY.—As part of the participation by the United States in the Program, the Secretary of Defense may, with respect to any property that is jointly acquired by the countries participating in the Program, agree to the disposal of the property without regard to any law of the United States that is otherwise applicable to the disposal of property owned by the United States. Such disposal may include the transfer of the interest of the United States in the property to one or more of the other participating countries or the sale of the property. Reimbursement for the value of the property disposed of (including the value of the interest of the United States in the property) shall be made in accordance with an agreement under subsection (a).

(f) REPORTS.—Not later than 60 days before the expiration date of any agreement under subsection (a), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the activities, costs, and accomplishments of the Program during the five-year period ending on the date of such report.

(g) SUNSET.—Any agreement entered into by the United States with another country under subsection (a), and United States participation in the joint agreement described in that subsection, shall expire not later than ~~five years~~ ten years after the date of the enactment of this Act [January 2, 2013].

Section 1203 would extend for one additional year, through fiscal year (FY) 2018, the savings provision in section 1243 (c) of the National Defense Authorization Act (NDAA) for FY 2017, which currently provides that the statutory authority that was contained in Title 10, U.S. Code (USC), section 1050 for the Secretary of Defense to fund Latin American cooperation activities “will continue to apply to the Inter-American Defense College during fiscal year 2017.” It is critical for this proposal to be enacted so DoD may continue to fund the operation of the Inter-American Defense College (IADC), for which the U.S. is the host nation.

The IADC is an international military educational organization that operates under the auspices of the Inter-American Defense Board (IADB). The IADB was originally organized in

1942, with the intent of coordinating Western Hemisphere defense efforts. In March 2006, the General Assembly of the Organization of American States (OAS), with U.S. participation and assent, passed a formal resolution making the IADB an independent international military organization of the OAS, and making the IADC an “organ” of the IADB. The IADC’s mission is to develop and offer to military officers and civilian officials from member states of the OAS advanced academic courses on matters related to military and defense issues, the inter-American system, and related disciplines. The IADC is located on the U.S. Army installation at Fort Lesley J. McNair in Washington, DC, and in deference to the U.S. role as host nation, the IADC’s Director is a U.S. General or Flag Officer.

DoD has previously provided personnel and funding support for the operation of the IADC under the authority of 10 USC 1050, which states that the Secretary of Defense or the Service Secretaries may pay the travel, subsistence, and special compensation of officers and students of Latin American countries “. . . *and other expenses* that the Secretary deems necessary for Latin American cooperation” (emphasis added). On 17 August 2010, Deputy Secretary of Defense William Lynne advised the Under Secretary of Defense for Policy in writing that DoD had authority under 10 USC 1050 to provide funding support for the operation of the IADC and that such DoD funding support was necessary for Latin American cooperation and for DoD’s efforts to build capacity in the Americas. Accordingly, DoD has provided U.S. military and DoD civilian personnel (in addition to the Director) to serve in billets at the IADC, and the U.S. Army, which is designated in the DoD Financial Management Regulation as the Administrative Agent for DoD funding support to the IADB/IADC, is currently tasked with providing the IADC approximately \$1.8M per year in direct operation and maintenance (O&M) funding support across the FYDP. This funding is used to cover the costs of operating the IADC, including the facilities on Fort McNair and the civilian faculty and staff who help operate the college. DoD funding comprises over 87% of the total annual funding received by the IADC, and is absolutely critical to the IADC’s continued ability to offer an advanced academic program commensurate with U.S. DoD senior service schools. DoD funding has not been used to pay the students’ costs associated with attending the IADC. The IADC does not charge tuition, and the Latin American nations pay for the travel and expenses for their personnel to attend the IADC.

As part of a much larger legislative effort to consolidate all of DoD’s security cooperation authorities, section 1243 (b)(1) of the NDAA for FY 2017 repealed 10 USC 1050, without retaining 10 USC 1050’s previous broad language which allowed the Secretary of Defense to expend DoD funds for “other expenses” the Secretary deems necessary for Latin American cooperation. The significant, negative impact of section 1243 (b)(1) on DoD’s ability to provide funding support to the IADC was only recognized very late in the FY 2017 legislative process, and as a result, section 1243 (c) in the FY17 NDAA provides a one year savings provision stating that 10 USC 1050 “will continue to apply to the IADC during fiscal year 2017”. This means that DoD’s current authority under 10 USC 1050 to provide funding support to the IADC will expire on 30 September 2017.. DoD is requesting to extend for one additional year the savings provision in section 1243 (c) of the FY17 NDAA to give the Department time to develop a replacement legislative proposal for DoD support to the IADC.

Budget Implications: It extends for one additional year the authority currently utilized by DoD organizations (primarily Army) to provide funding support to the IADC pursuant to the general

statutory authority in 10 USC 1050. This is funded within the FY 2018 President’s Budget submission.

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
IADC Support	1.837	1.858	1.878	1.883	1.905	Operation & Maintenance Army	04	442	1001010A
Total	1.837	1.858	1.878	1.883	1.905	--	--	--	--

Changes to Existing Law: This proposal would make the following changes to section 1243(c) of the National Defense Authorization Act for Fiscal Year 2017:

SEC. 1243. CONSOLIDATION AND REVISION OF AUTHORITIES FOR PAYMENT OF PERSONNEL EXPENSES NECESSARY FOR THEATER SECURITY COOPERATION.

* * * * *

(c) SAVINGS PROVISION FOR ~~FISCAL YEAR 2017~~ FISCAL YEARS 2017 AND 2018.—The authority under section 1050 of title 10, United States Code, as in effect on the day before the date of the enactment of this Act, shall continue to apply with respect to the Inter-American Defense College during ~~fiscal year 2017~~ fiscal years 2017 and 2018 under regulations prescribed by the Secretary of Defense.

Section 1204 would extend the termination date of the authority under section 1251 of the National Defense Authorization Act for Fiscal Year (FY) 2016 from September 30, 2018 to December 31, 2020. It also would amend section 1251 to conform to changes made in section 1233 of the National Defense Authorization Act for FY 2017 (Public Law 114-328) with regard to the use of “national security forces” instead of “national military forces”. Without these amendments the Secretary of Defense would lose this cost-free authority to provide training to our most vulnerable European Allies and partners.

In addition, this proposal would amend subsection (f) of section 1251 to reflect the revisions made to security assistance authorities in the National Defense Authorization Act for FY 2017.

Budget Implications: There would be no additional costs for this proposal. Substantively, the proposal would simply extend the termination date for section 1251. The limitations in section 1251 with regard to expenditures for incremental expenses and the sources of funds would remain unchanged. Accordingly, this proposal would not increase U.S. Government expenditures. The resources reflected in the table below are funded within the FY 2018 President’s Budget.

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Warsaw Initiative Fund	1	7	7	7	7	Operation and Maintenance, Defense-Wide	04	4GTD	
Building Partner Capacity	1	1	1	1	1	Operation and Maintenance, Army	01	142	0201113A
NATO Response Force	11	11	11	11	11	Operation and Maintenance, Army	01	142	0201113A
Traditional Commander Activities	0	3	3	3	3	Operation and Maintenance, Army	01	142	0201113A
Partnership Development Program	6	6	6	6	6	Operation and Maintenance, Army	01	142	0201113A
Additional Activities/European Reassurance Initiative	9	0	0	0	0	Operation and Maintenance, Army, OCO	01	135	0201195A
Total	28	28	28	28	28				

Changes to Existing Law: This proposal would make the following changes to section 1251 of the National Defense Authorization Act for Fiscal Year 2016, as amended by section 1233 of the National Defense Authorization Act for Fiscal Year 2017:

SEC. 1251. TRAINING FOR EASTERN EUROPEAN NATIONAL SECURITY FORCES IN THE COURSE OF MULTILATERAL EXERCISES.

(a) **AUTHORITY.**—The Secretary of Defense may provide the training specified in subsection (b), and pay the incremental expenses incurred by a country as the direct result of participation in such training, for the national security forces provided for under subsection (c).

(b) **TYPES OF TRAINING.**—The training provided to the national military security forces of a country under subsection (a) shall be limited to training that is—

(1) provided in the course of the conduct of a multilateral exercise in which the United States Armed Forces are a participant;

(2) comparable to or complimentary of the types of training the United States Armed Forces receive in the course of such multilateral exercise; and

(3) for any purpose as follows:

(A) To enhance and increase the interoperability of the military security forces to be trained to increase their ability to participate in coalition efforts led by the United States or the North Atlantic Treaty Organization (NATO).

(B) To increase the capacity of such military security forces to respond to external threats.

(C) To increase the capacity of such military security forces to respond to hybrid warfare.

(D) To increase the capacity of such ~~military~~ security forces to respond to calls for collective action within the North Atlantic Treaty Organization.

(c) ELIGIBLE COUNTRIES.—

(1) IN GENERAL.—Training may be provided under subsection (a) to the national ~~military~~ security forces of the countries determined by the Secretary of Defense, with the concurrence of the Secretary of State, to be appropriate recipients of such training from among the countries as follows:

(A) Countries that are a signatory to the Partnership for Peace Framework Documents, but not a member of the North Atlantic Treaty Organization.

(B) Countries that became a member of the North Atlantic Treaty Organization after January 1, 1999.

(2) ELIGIBLE COUNTRIES.—Before providing training under subsection (a), the Secretary of Defense shall, in coordination with the Secretary of State, submit to the Committees on Armed Services of the Senate and the House of Representatives a list of the countries determined pursuant to paragraph (1) to be eligible for the provision of training under subsection (a).

(d) FUNDING OF INCREMENTAL EXPENSES.—

(1) ANNUAL FUNDING.—Of the amounts specified in paragraph (2) for a fiscal year, up to a total of \$28,000,000 may be used to pay incremental expenses under subsection (a) in that fiscal year.

(2) AMOUNTS.—The amounts specified in this paragraph are as follows:

(A) Amounts authorized to be appropriated for a fiscal year for operation and maintenance, Army, and available for the Combatant Commands Direct Support Program for that fiscal year.

(B) Amounts authorized to be appropriated for a fiscal year for operation and maintenance, Defense-wide, and available for the Wales Initiative Fund for that fiscal year.

(C) Amounts authorized to be appropriated for a fiscal year for overseas contingency operations for operation and maintenance, Army, and available for additional activities for the European Deterrence Initiative for that fiscal year.

(3) AVAILABILITY OF FUNDS FOR ACTIVITIES ACROSS FISCAL YEARS.—Amounts available in a fiscal year pursuant to this subsection may be used for incremental expenses of training that begins in that fiscal year and ends in the next fiscal year.

(e) BRIEFING TO CONGRESS ON USE OF AUTHORITY.—Not later ~~that~~ than 90 days after the end of each fiscal year in which the authority in subsection (a) is used, the Secretary shall brief the Committees on Armed Services of the Senate and the House of Representatives on the use of the authority during such fiscal year, including each country with which training under the authority was conducted and the types of training provided.

(f) CONSTRUCTION OF AUTHORITY.—The authority provided in subsection (a) is in addition to any other authority provided by law authorizing the provision of training for the national ~~military~~ security forces of a foreign country, including ~~section 2282~~ chapter 16 of title 10, United States Code.

(g) INCREMENTAL EXPENSES DEFINED.—In this section, the term “incremental expenses” means the reasonable and proper cost of the goods and services that are consumed by a country as a direct result of that country's participation in training under the authority of this section,

including rations, fuel, training ammunition, and transportation. Such term does not include pay, allowances, and other normal costs of a country's personnel.

(h) **TERMINATION OF AUTHORITY.**—The authority under this section shall terminate on ~~September 30, 2018~~ December 31, 2020. Any activity under this section initiated before that date may be completed, but only using funds available for ~~fiscal years 2016 through 2018~~ fiscal year 2016 through calendar year 2020.

Section 1205 would extend through fiscal year (FY) 2018 current authority for the use of Operation and Maintenance, Defense-wide (O&M D-W) appropriations under the Coalition Support Fund (CSF) authority. The existing requirements and limitations with respect to such authority, including the exemption from the congressional notification requirement of CSF reimbursements for access based on an international agreement, are continued unchanged. This would allow the Department of Defense (DoD) to make routine payments quickly following each quarter once the access provided under the agreement is validated. Congress would maintain visibility over these payments through the CSF quarterly reports.

This proposal would also extend through FY 2018 current authority for use of O&M D-W appropriations under the CSF authority for stability activities in Pakistan’s Federally Administered Tribal Areas (FATA). This would allow DoD to focus reimbursements to the Government of Pakistan for stability operations that prevent the reemergence of safe havens within its borders, thereby reducing the operational space of militant groups that target U.S., coalition, and Afghan forces.

Budget Implications: \$1 billion of this proposal would be funded through O&M, D-W under the FY 2018 Overseas Contingency Operations budget request of which \$1 billion is for the CSF authority. This is funded within the FY 2018 President's Budget submission.

RESOURCE REQUIREMENTS (\$MILLIONS)								
	FY 2018	FY 2019	FY 2020	FY 2021	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
CSF	\$1,000				Operation & Maintenance, Defense-Wide	04	DSCA	1002199T
Total	\$1,000							

Changes to Existing Law: This proposal would make the following changes to section 1233 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 393):

**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2008
(PUBLIC LAW 110-181), AS AMENDED**

SEC. 1233. EXTENSION OF AUTHORITY AND MODIFICATION OF REIMBURSEMENT OF CERTAIN COALITION NATIONS FOR SUPPORT PROVIDED TO UNITED STATES MILITARY OPERATIONS.

(a) AUTHORITY.—From funds made available for the Department of Defense for the period beginning on October 1, 2016, and ending on ~~December 31, 2017~~ December 31, 2018 for overseas contingency operations for operation and maintenance, Defense-wide activities, the Secretary of Defense may reimburse—

(1) any key cooperating nation (other than Pakistan) for—

(A) logistical and military support provided by that nation to or in connection with United States military operations in Afghanistan, Iraq, or Syria; and

(B) logistical, military, and other support, including access, provided by that nation to or in connection with United States military operations described in subparagraph (A); and

(2) Pakistan for certain activities meant to enhance the security situation in the Afghanistan-Pakistan border region and for counterterrorism.

(b) OTHER SUPPORT.—Using funds described in subsection (a)(2), the Secretary of Defense may also assist any key cooperating nation supporting United States military operations in Afghanistan, Iraq, or Syria through the following:

(1) The provision of specialized training to personnel of that nation in connection with such operations, including training of such personnel before deployment in connection with such operations.

(2) The procurement and provision of supplies to that nation in connection with such operations.

(3) The procurement of specialized equipment and the loaning of such specialized equipment to that nation on a non-reimbursable basis in connection with such operations.

(c) AMOUNTS OF REIMBURSEMENT.—

(1) IN GENERAL.—Reimbursement authorized by subsection (a) may be made in such amounts as the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of the Office of Management and Budget, may determine, based on documentation determined by the Secretary of Defense to adequately account for the support provided.

(2) SUPPORT.—Support authorized by subsection (b) may be provided in such amounts as the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of the Office of Management and Budget, considers appropriate.

(d) LIMITATIONS.—

(1) LIMITATION ON AMOUNT.—The aggregate amount of reimbursements made under subsection (a) and support provided under subsection (b) during the period beginning on ~~October 1, 2016, and ending on December 31, 2017~~, may not exceed ~~\$1,100,000,000~~ October 1, 2017, and ending on December 31, 2018, may not exceed \$1,000,000,000. Of the aggregate amount specified in the preceding sentence, the total amount of reimbursements made under subsection (a) and support provided under subsection (b) to Pakistan during the period beginning on ~~October 1, 2016, and ending on~~

~~December 31, 2017, may not exceed \$900,000,000~~ October 1, 2017, and ending on December 31, 2018, may not exceed \$800,000,000.

(2) PROHIBITION ON CONTRACTUAL OBLIGATIONS TO MAKE PAYMENTS.—The Secretary of Defense may not enter into any contractual obligation to make a reimbursement under the authority in subsection (a).

(3) PROHIBITION ON REIMBURSEMENT OF PAKISTAN FOR SUPPORT DURING PERIODS CLOSED TO TRANSSHIPMENT.—Effective as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2015, funds (including funds from a prior fiscal year that remain available for obligation) may not be used for reimbursements under the authority in subsection (a) for Pakistan for claims of support provided during any period when the ground lines of supply through Pakistan to Afghanistan were closed to the transshipment of equipment and supplies in support of United States military operations in Afghanistan.

(e) REIMBURSEMENT OF PAKISTAN FOR SECURITY ENHANCEMENT ACTIVITIES.—

(1) ACTIVITIES.—Reimbursement authorized by subsection (a)(2) may be provided for activities as follows:

(A) Counterterrorism activities, including the following:

(i) Eliminating infrastructure, training areas, and sanctuaries used by terrorist groups, and preventing the establishment of new or additional infrastructure, training areas, and sanctuaries.

(ii) Direct action against individuals that are involved in or supporting terrorist activities.

(iii) Any other activity recognized by the Secretary of Defense as a counterterrorism activity for purposes of subsection (a)(2).

(B) Border security activities along the Afghanistan-Pakistan border, including the following:

(i) Building and maintaining border outposts.

(ii) Strengthening cooperative efforts between the Pakistan military and the Afghan National Defense and Security Forces, including border security cooperation.

(iii) Maintaining access to and securing key ground lines of communication.

(iv) Providing training and equipment for the Pakistan Frontier Corps Khyber Pakhtunkhwa.

(v) Improving interoperability between the Pakistan military and the Pakistan Frontier Corps Khyber Pakhtunkhwa.

(C) Any activities carried out by the Pakistan military that the Secretary of Defense determines and reports to the appropriate congressional committees have enhanced the security of United States personnel stationed in Afghanistan or enhanced the effectiveness of United States military personnel in conducting counterterrorism operations and training, advising, and assisting the Afghan National Defense and Security Forces.

(2) REPORT.—Not later than December 31, 2017, the Secretary of Defense shall submit to the appropriate congressional committees a report on the expenditure of funds under the authority in subsection (a)(2), including a description of the following:

(A) The purpose for which such funds were expended.

(B) Each organization on whose behalf such funds were expended, including the amount expended on such organization and the number of members of such organization supported by such amount.

(C) Any limitation imposed on the expenditure of funds under subsection (a)(2), including on any recipient of funds or any use of funds expended.

(3) INFORMATION ON CLAIMS DISALLOWED OR DEFERRED BY THE UNITED STATES.—

(A) IN GENERAL.—The Secretary of Defense shall submit to the appropriate congressional committees, in the manner specified in subparagraph (B), an itemized description of the costs claimed by the Government of Pakistan for activities specified in paragraph (1) provided by Government of Pakistan to the United States for which the United States will disallow or defer reimbursement to the Government of Pakistan under the authority in subsection (a)(2).

(B) MANNER OF SUBMITTAL.—

(i) IN GENERAL.—To the maximum extent practicable, the Secretary shall submit each itemized description of costs required by subparagraph (A) not later than 180 days after the date on which a decision to disallow or defer reimbursement for the costs claimed is made.

(ii) FORM.—Each itemized description of costs under clause (i) shall be submitted in an unclassified form, but may include a classified annex.

(f) NOTICE TO CONGRESS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary of Defense shall notify the appropriate congressional committees not later than 15 days before making any reimbursement under the authority in subsection (a) or providing any support under the authority in subsection (b). In the case of any reimbursement to Pakistan under the authority of this section, such notice shall be made in accordance with the notice requirements under section 1232(b).

(2) EXCEPTION.—The requirement to provide notice under paragraph (1) shall not apply with respect to a reimbursement for access based on an international agreement.

(g) QUARTERLY REPORTS.—The Secretary of Defense shall submit to the appropriate congressional committees on a quarterly basis a report on any reimbursements made under the authority in subsection (a), and any support provided under the authority in subsection (b), during such quarter.

(h) DEFINITION.—In this section, the term ‘appropriate congressional committees’ means—

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

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

TITLE XIII—[RESERVED]

TITLE XIV—OTHER AUTHORIZATIONS

Section 1401 would authorize appropriations for the Defense Working Capital Funds in the amount equal to the budget authority requested in the President’s Budget for fiscal year 2018.

Section 1402 would authorize appropriations for the Joint Urgent Operational Needs Fund in the amount equal to the budget authority requested in the President’s Budget for fiscal year 2018.

Section 1403 would authorize appropriations for Chemical Agents and Munitions Destruction, Defense in amounts equal to the budget authority requested in the President’s Budget for fiscal year 2018.

Section 1404 would authorize appropriations for Drug Interdiction and Counter-Drug Activities, Defense-wide in the amount equal to the budget authority requested in the President’s Budget for fiscal year 2018.

Section 1405 would authorize appropriations for the Defense Inspector General in amounts equal to the budget authority requested in the President’s Budget for fiscal year 2018.

Section 1406 would authorize appropriations for the Defense Health Program in amounts equal to the budget authority requested in the President’s Budget for fiscal year 2018.

Subtitle B—Other Matters

Section 1411, within the funds authorized for operation and maintenance under section 506, would authorize funds to be transferred to the Joint Department of Defense–Department of Veterans Affairs Medical Facility Demonstration Fund established by section 1704(a) of the National Defense Authorization Act for Fiscal Year 2010.

Section 1412 would authorize appropriations for fiscal year 2018 for the Armed Forces Retirement Home in the amount equal to the budget authority requested in the President’s Budget for fiscal year 2018.

TITLE XV—AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR OVERSEAS CONTINGENCY OPERATIONS

TITLE XVI— STRATEGIC PROGRAMS, CYBER, AND INTELLIGENCE MATTERS

Section 1601 would amend current statutory authority for the Secretary of Defense to authorize the conduct of those commercial activities necessary to provide security for authorized intelligence collection activities abroad undertaken by the Department of Defense (DoD) by

extending the current sunset on the authority of the Secretary of Defense to conduct commercial activities (December 31, 2017) by one year.

Additional classified background information regarding the Department's conduct of its commercial cover program will be made available to the armed services committees.

Budget Implications: This is funded in the FY 2018 President's Budget. Budget tables are classified and will be provided upon request.

Changes to Existing Law: This proposal would make the following changes to section 431 of title 10, United States Code:

§ 431. Authority to engage in commercial activities as security for intelligence collection activities

(a) **AUTHORITY.**—The Secretary of Defense, subject to the provisions of this subchapter, may authorize the conduct of those commercial activities necessary to provide security for authorized intelligence collection activities abroad undertaken by the Department of Defense. No commercial activity may be initiated pursuant to this subchapter after ~~December 31, 2017~~ December 31, 2018.

(b) **INTERAGENCY COORDINATION AND SUPPORT.**—Any such activity shall—
(1) be coordinated with, and (where appropriate) be supported by, the Director of the Central Intelligence Agency; and
(2) to the extent the activity takes place within the United States, be coordinated with, and (where appropriate) be supported by, the Director of the Federal Bureau of Investigation.

(c) **DEFINITIONS.**—In this subchapter:
(1) The term "commercial activities" means activities that are conducted in a manner consistent with prevailing commercial practices and includes—
(A) the acquisition, use, sale, storage and disposal of goods and services;
(B) entering into employment contracts and leases and other agreements for real and personal property;
(C) depositing funds into and withdrawing funds from domestic and foreign commercial business or financial institutions;
(D) acquiring licenses, registrations, permits, and insurance; and
(E) establishing corporations, partnerships, and other legal entities.
(2) The term "intelligence collection activities" means the collection of foreign intelligence and counterintelligence information.

Section 1602, unmanned aircraft systems (UAS) are commercially available, challenging to detect and mitigate, and capable of carrying harmful payloads and performing surveillance while evading traditional ground security measures. However, some of the most promising technical countermeasures for detecting and mitigating UAS may be construed to be illegal under certain laws that were passed when UAS were unforeseen. These laws include statutes

governing electronic communications, access to protected computers, and interference with civil aircraft.

Potential liability under such laws restricts innovation, evaluation, and operational use of technical countermeasures that can address the unique public safety and homeland security threats posed by UAS while minimizing collateral risk. The proposed legislation provides a savings clause under title 18, United States Code, for authorized development or use of such countermeasures.

This legislation provides that development or use of countermeasures against UAS must be pursuant to a coordinated, government-wide policy. A coordinated approach is critical to ensure that development and use of technical countermeasures for detecting and mitigating UAS is consistent with the safety and efficiency of the National Airspace System (NAS), the protection of privacy, civil rights, and civil liberties, and other government-wide equities. Indeed, multiple departments and agencies have responsibility for the safety or security of facilities, locations, installations, and operations that may be vulnerable to threats posed by UAS, including the Department of Homeland Security, the Department of Transportation, the Department of Justice, the Department of Defense, the Department of Energy, the Department of Agriculture, the Department of the Interior, and the Office of the Director of National Intelligence. Multiple departments and agencies also perform important operations that may be vulnerable to threats posed by UAS, including but not limited to: search and rescue operations; medical evacuations; wildland firefighting; patrol and detection monitoring of the United States border; National Security Special Events and Special Event Assessment Ratings events; fugitive apprehension operations and law enforcement investigations; prisoner detention, correctional, and related operations; securing authorized vessels, whether moored or underway; authorized protection of a person or persons; transportation of special nuclear materials; and security, emergency response, or military training and operations. The proposed legislation helps to ensure that authorized members of the Armed Forces and Federal officers, employees, contractors, and other appropriate persons designated by the heads of the executive department and agencies consistent with the requirements of the government-wide policy required by the proposed legislation will not face penalties for protecting those equities in a way that is consistent with other applicable law, including the U.S. Constitution.

Subsection (a) sets forth the savings clause discussed above. Though many provisions in Title 18 may conflict with authorized Counter-UAS activities, certain statutes are especially problematic. For example, sections 2510–2522 of title 18, United States Code (the Wiretap Act), among other things, subject any person who intentionally intercepts the “contents” of electronic communications to fines, imprisonment, and/or civil liability, and sections 3121–3127 of title 18, United States Code (the Pen/Trap Statute), among other things, generally prohibit the installation or use of a device to collect “non-content” information of electronic communications. In addition, section 1030 of title 18, United States Code (the Computer Fraud and Abuse Act) prohibits unauthorized access to and use of “protected computers.” These statutes might be construed to prohibit access to or interception of the telemetry, signaling information, or other communications of UAS. Furthermore, any attempt to interfere with the flight of UAS that pose a threat to covered facilities, locations and installations or covered operations may conflict with section 32 of title 18, United States Code (the Aircraft Sabotage Act), which among other things,

imposes fines and criminal penalties on anyone who “damages, destroys, disables, or wrecks any aircraft in the special aircraft jurisdiction of the United States.” In the event of unanticipated conflicts with other statutes, and in order to avoid criminalizing critically important activities by government officials that are consistent with the U.S. Constitution, the savings clause also refers generally to “any provision of title 18, United States Code.” Congress has previously recognized the importance of ensuring that federal criminal laws in Title 18 do not inadvertently blunt the development or use of UAS countermeasures. The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 contains two sections (Sec. 1697—codified at section 130i of title 10, U.S. Code—and Sec. 3112) authorizing the Department of Defense, and the Department of Energy, respectively, to protect certain facilities and assets from threats posed by UAS. Both sections authorize such activities “[n]otwithstanding any provision of title 18.”

Subsection (b) describes the specific actions referenced in subsection (a), which relate to the UAS context. The proposed legislation would generally allow research, testing, training on, and evaluating technical means for countering UAS, as well as the use of technical means to detect, identify, monitor, and track a UAS to evaluate whether it poses a threat to the safety or security of covered facilities, locations, and installations or covered operations. With respect to the use of technical means to re-direct, disable, disrupt control of, exercise control of, seize, or confiscate UAS, the proposed legislation would allow such actions in response to a UAS posing a threat to the safety or security of covered facilities, locations, and installations or covered operations. Subsection (b)(3) of the proposed legislation would allow the use of reasonable force to disable, disrupt, damage or destroy a UAS posing a threat to the safety or security of covered facilities, locations, and installations or covered operations.

Subsection (c) authorizes, but does not require, civil forfeiture of UAS that are subject to authorized actions described in subsection (b).

Subsection (d) provides that the actions in subsections (b) and (c) may be taken only after the issuance of government-wide policy prescribing roles and responsibilities for implementing this section. That policy would be developed in consultation with appropriate departments and agencies, including the Secretary of Transportation to ensure the safety and efficiency of the NAS. Requiring the development of government-wide policy ensures that departments and agencies execute UAS countermeasures in a coordinated and effective manner, and that such activities are subject to appropriate oversight and control. A whole-of-government framework also protects the integrity of the NAS, while permitting departments and agencies to defend covered facilities and operations from malicious uses of UAS. The proposed legislation requires the government-wide policy to (1) respect privacy, civil rights and civil liberties; (2) prescribe roles and processes, as appropriate, to ensure compliance with applicable law and regulations concerning the management of the radio frequency spectrum; (3) consider each Federal department and agency’s responsibilities for the safety or security of its facilities and operations; and (4) develop standards and procedures with respect to designations of covered facilities, locations, installations, covered operations, and covered persons, including by requiring that only that only individuals with appropriate training and acting subject to Federal Government oversight may be designated as such.

Subsection (e) provides that departments and agencies must issue policies, procedures, or plans to carry out this section, consistent with any limitations or specifications in the government-wide policy. Departments and agencies may also issue regulations to carry out this section. Subsection (e)(2) provides that departments and agencies must develop the actions issued under this subsection in coordination with the Secretary of Transportation. This provision intends to foster airspace safety by ensuring that departments and agencies engage with the Secretary of Transportation early on to identify and mitigate any potential collateral impacts on the NAS. In the NDAA for FY 2017, Congress similarly recognized the importance of preserving a coordinating role for the Secretary of Transportation in the development of the actions for countering UAS. The term "coordination" in subsection (e)(2) means that the heads of departments and agencies will seek the views, information, and advice of the Secretary of Transportation concerning any potential effects on the NAS as department and agencies develop the types of actions to be taken and the circumstances of execution under this provision. The Secretary of Transportation will provide such views, information, and advice in a reasonably prompt manner. If the Secretary of Transportation notifies the head of a department or agency that taking the proposed actions would affect aviation safety or NAS operations, the head of the department or agency concerned will work collaboratively with the Secretary of Transportation to consider proposed actions to mitigate or otherwise address effects on aviation safety, air navigation services, and NAS efficiency—consistent with national or homeland security and law enforcement requirements—prior to finalizing the types of actions authorized to be taken under this provision.

Subsection (e)(3) requires internal review of regulations, policies, procedures, or plans that would result in the monitoring, interception or other access to wire or electronic communications.

Subsection (f) provides that no court shall have jurisdiction to hear causes or claims, including for money damages, against a federal officer, employee, agent or contractor arising from any authorized actions described in subsections (b). This provision serves to protect individuals taking authorized actions described in subsections (b) from damages claims and official-capacity claims.

Subsection (g) clarifies that the proposed legislation does not affect Federal agencies' authority to continue testing and/or using technical means for countering UAS that comport with title 18, United States Code, and other applicable law, including the aforementioned sections of the NDAA for FY 2017. In addition, the proposed legislation clarifies that it does not restrict or limit the authority of the Federal Aviation Administration, which remains the exclusive Federal agency with authority over the nation's airspace and authority to manage the safe and efficient use of the NAS.

Subsection (h) provides exemptions from disclosure under State and Federal law for information relating to the technology used pursuant to the proposed legislation, and specific policies, procedures, or plans issued thereunder.

Subsection (i) clarifies that "unmanned aircraft" and "unmanned aircraft system" have the meanings given those terms by the FAA Modernization and Reform Act of 2012. The term

“covered facilities, locations and installations” is defined to mean non-mobile assets in the United States that are designated by the respective agency head pursuant to standards and procedures developed in government-wide policy. The term “covered person” is defined to mean any member of the Armed Forces, a Federal officer, employee, agent, or contractor, or any other individual that is designated by the respective department or agency head in accordance with the standards and procedures established in government-wide policy. The term “covered operations” is defined to mean governmental operations that are determined by an agency head, consistent with government-wide policy, to be important to public safety, law enforcement, or national or homeland security.

Subjection (j) provides that the legislation ceases to have effect on December 31, 2022.

DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS

TITLE XXI—ARMY MILITARY CONSTRUCTION

TITLE XXII—NAVY MILITARY CONSTRUCTION

TITLE XXIII—AIR FORCE MILITARY CONSTRUCTION

TITLE XXIV—DEFENSE AGENCIES MILITARY CONSTRUCTION

TITLE XXV—NORTH ATLANTIC TREATY ORGANIZATION SECURITY INVESTMENT PROGRAM

TITLE XXVI—GUARD AND RESERVE FORCES FACILITIES

TITLE XXVII—BASE REALIGNMENT AND CLOSURE ACTIVITIES

TITLE XXVIII— MILITARY CONSTRUCTION GENERAL PROVISIONS

Section 2801 would provide continued authority for the Secretary of Defense to use funds appropriated for operation and maintenance for military construction to meet temporary operational requirements during a time of declared war, national emergency, or contingency operation through the end of fiscal year 2018.

Extension of this authority would enable the Department of Defense to provide basic facilities and infrastructure critical to military operations months and years ahead of the regular annual authorization and appropriation process for construction projects. It also would provide continuous, needed support to our commanders and forces during ongoing and future contingency operations.

This proposal would retain the current requirement to provide notice to Congress prior to the use of funds appropriated from operation and maintenance under the conditions set forth in

subsection (a) of section 2808 of the Military Construction Authorization Act for Fiscal Year 2004. In addition, the Department of Defense still would not be able to proceed with execution of these projects until after a waiting period following the delivery of the notification to Congress. (The waiting period is 10 days, unless notification is by electronic means, in which case it is 7 days.)

This proposal would continue to allow the Secretary to waive the long-term base restriction in Afghanistan, as Contingency Construction Authority is not authorized at installations where the United States is reasonably expected to have a long-term presence. However, from an operational standpoint, whether the United States intends to have a long-term presence at key locations does not preclude the emergence of critical, urgent operational capability requirements at these locations; thus, the Department needs the proposed waiver authority.

Budget Implications: This proposal would authorize the Secretary of Defense to use operation and maintenance funds already authorized and appropriated for construction to meet temporary operational requirements when all necessary pre-requisites are met. It requires no additional appropriation of funds and results in no savings. It is merely an extension of a current, expiring authority.

RESOURCE REQUIREMENTS (\$MILLION)							
	FY 2017	FY 2018	FY 2019	Appropriation From	Budget Activity	Dash- 1 Line Item	Program Element
O&M- AF	0	0	0				
Total	0	0	0				

Changes to Existing Law: This proposal would make the following changes to section 2808 of the National Defense Authorization Act for Fiscal Year 2004 (division B of Public Law 108-136; 117 Stat. 1723):

SEC. 2808. TEMPORARY, LIMITED AUTHORITY TO USE OPERATION AND MAINTENANCE FUNDS FOR CONSTRUCTION PROJECTS IN CERTAIN AREAS OUTSIDE THE UNITED STATES.

(a) TEMPORARY AUTHORITY.—The Secretary of Defense may obligate appropriated funds available for operation and maintenance to carry out a construction project inside the area of responsibility of the United States Central Command or the area of responsibility of Combined Joint Task Force-Horn of Africa that the Secretary determines meets each of the following conditions:

- (1) The construction is necessary to meet urgent military operational requirements of a temporary nature involving the use of the Armed Forces in support of a declaration of war, the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621), or a contingency operation.

(2) The construction is not carried out at a military installation where the United States is reasonably expected to have a long-term presence, unless the military installation is located in Afghanistan, for which projects using this authority may be carried out at installations deemed as supporting a long-term presence.

(3) The United States has no intention of using the construction after the operational requirements have been satisfied.

(4) The level of construction is the minimum necessary to meet the temporary operational requirements.

(b) NOTIFICATION OF OBLIGATION OF FUNDS.—Before using appropriated funds available for operation and maintenance to carry out a construction project outside the United States that has an estimated cost in excess of the amounts authorized for unspecified minor military construction projects under section 2805(c) of title 10, United States Code, the Secretary of Defense shall submit to the congressional committees specified in subsection (f) a notice regarding the construction project. The project may be carried out only after the end of the 10-day period beginning on the date the notice is received by the committees or, if earlier, the end of the 7-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of title 10, United States Code. The notice shall include the following:

(1) Certification that the conditions specified in subsection (a) are satisfied with regard to the construction project.

(2) A description of the purpose for which appropriated funds available for operation and maintenance are being obligated.

(3) All relevant documentation detailing the construction project.

(4) An estimate of the total amount obligated for the construction.

(c) ANNUAL LIMITATION ON USE OF AUTHORITY.—

(1) The total cost of the construction projects carried out under the authority of this section using, in whole or in part, appropriated funds available for operation and maintenance shall not exceed \$100,000,000 between ~~October 1, 2016~~ October 1, 2017, and the earlier of ~~December 31, 2017~~ December 31, 2018, or the date of the enactment of an Act authorizing funds for military activities of the Department of Defense for fiscal year ~~2018~~ 2019.

(2) Notwithstanding paragraph (1), the Secretary of Defense may authorize the obligation under this section of not more than an additional \$10,000,000 of appropriated funds available for operation and maintenance for a fiscal year if the Secretary determines that the additional funds are needed for costs associated with contract closeouts.

[(d) Repealed.]

(e) RELATION TO OTHER AUTHORITIES.—The temporary authority provided by this section, and the limited authority provided by section 2805(c) of title 10, United States Code, to use appropriated funds available for operation and maintenance to carry out a construction project are the only authorities available to the Secretary of Defense and the Secretaries of the military departments to use appropriated funds available for operation and maintenance to carry out construction projects.

(f) CONGRESSIONAL COMMITTEES.—The congressional committees referred to in this section are the following:

(1) The Committee on Armed Services and the Subcommittee on Defense and the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies of the Committee on Appropriations of the Senate.

(2) The Committee on Armed Services and the Subcommittee on Defense and the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies of the Committee on Appropriations of the House of Representatives.

(g) EFFECT OF FAILURE TO SUBMIT PROJECT NOTIFICATIONS.—If the advance notice of the proposed obligation of funds for a construction project required by subsection (b) is not submitted to the congressional committees specified in subsection (f) by the required date, appropriated funds available for operation and maintenance may not be obligated or expended after that date under the authority of this section to carry out construction projects outside the United States until the date on which the notice is finally submitted.

(h) EXPIRATION OF AUTHORITY.—The authority to obligate funds under this section expires on the later of—

(1) December 31, ~~2017~~ 2018; or

(2) the date of the enactment of an Act authorizing funds for military construction for fiscal year ~~2018~~ 2019.

(i) CERTAIN COUNTRIES IN THE AREA OF RESPONSIBILITY OF UNITED STATES AFRICA COMMAND DEFINED.—In this section, the term “certain countries in the area of responsibility of the United States Africa Command” means Kenya, Somalia, Ethiopia, Djibouti, Seychelles, Burundi, and Uganda.

TITLE XXIX— DEFENSE BASE CLOSURE AND REALIGNMENT

Sections 2901-2912: This proposed Defense Base Closure and Realignment Act (BRAC) of 2017 would authorize one new round of base closures and realignments, in 2021, using the statutory commission process that has proven, repeatedly, to be the only effective and fair way to eliminate excess Department of Defense (DoD) infrastructure and to reconfigure what must remain.

Under the statutory BRAC process, the Secretary makes closure and realignment recommendations to an independent Commission based on a 20-year force structure plan and statutory selection criteria that make military value (informed by the military judgement of the Services and joint groups) the primary consideration. The Commission reviews the Secretary’s recommendations for consistency with the force structure plan and the selection criteria and can modify, reject, or add to the Department’s recommendations making its own recommendations to the President; provided it finds that the Secretary deviated substantially from either the force structure plan or the selection criteria. If the President accepts the Commission’s recommendations (on an all-or-none basis), and Congress fails to enact a joint resolution of disapproval within 45 days (also on an all-or-none basis), the Department has a legal obligation

to close and realign the installations as recommended by the Commission. The Department must initiate all closures and realignments within two years of the date the President transmits the recommendations to Congress, and complete all closures and realignments within six years of that same date.

In carrying out the statutory duties to close and realign military installations, the Secretary of Defense is empowered through the BRAC statute to support local communities by providing planning and financial assistance and carry out environmental restoration activities. Further, the transfer authorities exercised by the Secretary shall be subject to section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

The Department of Defense (DoD) has not been authorized to undertake a BRAC analysis for over 14 years. In those years, the Department has undergone considerable changes that have impacted the force structure, mission requirements, and threats facing the United States. In addition, budget constraints imposed by the Budget Control Act have further strained existing resources and forced the Department to trim the costs of sustaining the infrastructure it does maintain. Specifically, the recent Government Accountability Office report, Defense Facility Condition Revised Guidance Needed to Improve Oversight of Assessments and Ratings (16-369) notes that, “for fiscal years 2009 through 2014, the Military Services reported collectively spending on average 79 percent (\$40 billion for those years) of the facilities sustainment model’s estimated requirements (of \$51 billion for those years).” This underscores the fiscal reality that the Department cannot fully fund all sustainment requirements. Limited construction and maintenance funding is better used at enduring locations with the highest military value rather than keeping installations that the Department does not need. Reality and common business sense dictate that infrastructure should be reconfigured to meet specific needs and changing threats.

The Department requires a comprehensive BRAC process to reduce excess while enhancing military value, achieving recurring savings, and ensuring retention of excess space for contingency and surge requirements, such as changed missions, tactics, and technology. As indicated in testimony over the last several years, and as supported by two recent assessments of categories of excess capacity, the Department has significant excess capacity – between 19 and 22 percent depending on what level of force structure is used in the analysis. Using FY 2012 force structure and 32 metrics of capacity (as tied to force structure plans) the analysis indicates that the Department has 19 percent infrastructure excess distributed as follows: Army 29 percent; Navy 6 percent; Air Force 28 percent; and the Defense Logistics Agency 13 percent. Using the FY 2019 force structure (as projected in PB FY 2016) and 32 metrics of capacity tied to force structure plans, the analysis indicates that the Department has 22 percent excess infrastructure capacity distributed as follows: Army 33 percent; Navy 7 percent; Air Force 32 percent; and the Defense Logistics Agency 12 percent. This level of excess is not surprising given the fact that in 2004 the Department found that it had 24% excess and BRAC 2005 reduced infrastructure by 3.4% (as measured by plant replacement value).

BRAC supports the Secretary of Defense’s “horizontal integration” and “ambitious reform agenda” as well as the Administration’s commitment to rebuild infrastructure because it focuses on the necessary so we do not waste resources on the excess. Of equal importance is the

ability to conduct a holistic, periodic view of stationing in view of new and changing force structure configurations.

Savings from BRAC rounds are real and substantial. The last five BRAC rounds are collectively saving the Department \$12B annually. A new efficiency-focused BRAC could save the Department an additional ~\$2B annually and eliminate as many as 26,000 civilian positions (based on eliminations in the '93/'95 rounds).

The savings generated from BRAC result from avoiding the cost of retaining and operating unneeded infrastructure. DoD no longer has to fund the recurring operation and maintenance (O&M) nor the civilian and military personnel costs for those installations it closed or for the portion of those realigned bases that it did not retain. Savings from base realignments and closures are retained by the military Services and used to support higher priority programs that enhance modernization, readiness, and quality of life for our armed forces. As the General Accountability Office (GAO) indicated, “[i]n addition to our analyses, studies by other federal agencies, such as CBO, the DoD Inspector General, and the Army Audit Agency, have shown that BRAC savings are real and substantial and are related to cost reductions in key operational areas as a result of BRAC actions.” Government Accountability Office, MILITARY BASE CLOSURES, Progress in Completing Actions from Prior Realignments and Closures, GAO-02-433 (April 2002).

The Department and Congress have previously agreed that changes in force structure must be accompanied by corresponding changes in support infrastructure. Congress created the BRAC process for that reason, and it has emerged as the only fair, objective, and proven process for closing and realigning military installations in the United States. The Department has therefore worked with Congress to provide suggested changes to the BRAC legislation that would maintain the benefits of BRAC while addressing congressional concerns with the “transformational” BRAC 2005 round. Our legislative proposal addresses congressional concerns while maintaining the core tenets of a process that has worked in five previous BRAC rounds. The first four BRAC rounds focused on efficiencies, while the BRAC 2005 round was more of a transformational BRAC across the Department. To ensure the next BRAC round is focused on saving money and maximizing efficiency, the Department’s revised BRAC legislation adds a requirement for the Secretary of Defense to certify that the BRAC round will have the primary objective of eliminating excess infrastructure to maximize efficiency and reduce cost. Similar to the existing requirement to certify the need for a BRAC round, this certification occurs at the outset of the BRAC process and is a precondition to moving forward with development of recommendations. Additionally, subject to the requirement to give priority consideration to the military value selection criteria, the proposed legislation would require the Secretary to emphasize those recommendations that yield net savings within five years of completing the recommendation, and would limit the Secretary’s ability to make recommendations that do not yield savings within 20 years. In order to make a recommendation that does not yield savings within 20 years, the Secretary must expressly determine that the military value of such recommendations supports or enhances a critical national security interest of the United States.

The key is maintaining the essence of the BRAC process: treating all bases equally, all or none review by both the President and Congress, an independent Commission, the priority of military value, and a clear legal obligation to implement all of the recommendations in a time certain together with all the authorities needed to accomplish implementation (specifically the authority to undertake military construction necessary to implement recommendations).

The Department believes we have addressed all congressional concerns. The Department has looked at overseas installations first and successfully completed an efficiency-like BRAC in Europe that will save \$500M a year, completed an updated excess capacity assessment based on a FY 2012 force structure, demonstrated the transformative nature of BRAC 2005 and how a future BRAC will be focused on efficiency, programmed costs and projected savings into the budget; and, provided proposed legislative changes to the BRAC law.

The time to authorize another BRAC round is now. The BRAC process requires considerable time to analyze and develop recommendations, have those recommendations reviewed by the independent BRAC Commission, and then implemented over a six year period of time. The longer authorization is delayed, the longer the Department will be forced to expend valuable resources on unnecessary facilities instead of weapons systems, readiness, and other national security priorities.

We now hope that this will result in a real dialog with members of Congress regarding the need for and value of the BRAC process, ultimately resulting in authority for a 2021 BRAC round.

Budget Implications: Specific budget implications will be determined by the analysis authorized by this statute. Implementation costs will be substantial. This upfront funding, however, will be offset by resulting savings which will be even more substantial. For instance, the 2005 round required \$35 billion over the statutory six-year implementation period. This investment generated \$15 billion in savings during its six-year implementation period and has begun generating net annual savings in Fiscal Year (FY) 2012 of \$4 billion that will recur each year thereafter.

Changes to Existing Law: This proposal would make changes to existing law as follows:

TITLE 5, UNITED STATES CODE

§ 6304. Annual leave; accumulation

(a)***

* * * * *

(d)(1)***

* * * * *

(3)(A) For the purpose of this subsection, the closure of, and any realignment with respect to, an installation of the Department of Defense pursuant to ~~the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687~~

~~note~~) a base closure law, as that term is defined in section 101(a)(17) of title 10, during any period, the closure of an installation of the Department of Defense in the Republic of Panama in accordance with the Panama Canal Treaty of 1977, and the closure of any other installation of the Department of Defense, during the period beginning on October 1, 1992, and ending on December 31, 1997, shall be deemed to create an exigency of the public business and any leave that is lost by an employee of such installation by operation of this section (regardless of whether such leave was scheduled) shall be restored to the employee and shall be credited and available in accordance with paragraph (2).

TITLE 10, UNITED STATES CODE

§ 101. Definitions

(a) IN GENERAL.—The following definitions apply in this title:

* * * * *

(17) The term “base closure law” means the following:

(A) Section 2687 of this title.

(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(C) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(D) The Defense Base Closure and Realignment Act of 2017.

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§ 2667. Leases: non-excess property of military departments and Defense Agencies

(a)***

* * * * *

(e) DEPOSIT AND USE OF PROCEEDS.—(1)(A) The Secretary concerned shall deposit in a special account in the Treasury established for that Secretary the following:

(i) All money rentals received pursuant to leases entered into by that Secretary under this section.

(ii) All proceeds received pursuant to the granting of easements by that Secretary under section 2668 of this title.

(iii) All proceeds received by that Secretary from authorizing the temporary use of other property under the control of that Secretary.

(B) Subparagraph (A) does not apply to the following proceeds:

(i) Amounts paid for utilities and services furnished lessees by the Secretary concerned pursuant to leases entered into under this section.

(ii) Money rentals referred to in paragraph (3), (4), or (5).

(C) Subject to subparagraphs (D) and (E), the proceeds deposited in the special account established for the Secretary concerned shall be available to the Secretary, in such amounts as provided in appropriation Acts, for the following:

- (i) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities.
- (ii) Construction or acquisition of new facilities.
- (iii) Lease of facilities.
- (iv) Payment of utility services.
- (v) Real property maintenance services.

(D) At least 50 percent of the proceeds deposited in the special account established for the Secretary concerned shall be available for activities described in subparagraph (C) only at the military installation or Defense Agency location where the proceeds were derived.

(E) If the proceeds deposited in the special account established for the Secretary concerned are derived from activities associated with a military museum described in section 489(a) of this title, the proceeds shall be available for activities described in subparagraph (C) only at that museum.

(2) Payments for utilities and services furnished lessees pursuant to leases entered into under this section shall be credited to the appropriation account or working capital fund from which the cost of furnishing the utilities and services was paid.

(3) Money rentals received by the United States directly from a lease under this section for agricultural or grazing purposes of lands under the control of the Secretary concerned (other than lands acquired by the United States for flood control or navigation purposes or any related purpose, including the development of hydroelectric power) may be retained and spent by the Secretary concerned in such amounts as the Secretary considers necessary to cover the administrative expenses of leasing for such purposes and to cover the financing of multiple-land use management programs at any installation under the jurisdiction of the Secretary.

(4) Money rentals received by the United States from a lease under subsection (g) at a military installation approved for closure or realignment under a base closure law before January 1, 2005, shall be deposited into the account established under section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(5) Money rentals received by the United States from a lease under subsection (g) at a military installation approved for closure or realignment under a base closure law ~~on or after January 1, 2005,~~ from January 1, 2005 through December 31, 2005, shall be deposited into the account established under section 2906A(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(6) Money rentals received by the United States from a lease under subsection (g) at a military installation approved for closure or realignment under a base closure law on or after January 1, 2006, shall be deposited into the account established under section 2906 of the Defense Base Closure and Realignment Act of 2017.

TITLE 49, UNITED STATES CODE

§ 47151. Authority to transfer an interest in surplus property

* * * * *

(e) REQUESTS BY PUBLIC AGENCIES.—Except with respect to a request made by another department, agency, or instrumentality of the executive branch of the United States Government, such a department, agency, or instrumentality shall give priority consideration to a request made by a public agency (as defined in section 47102) for surplus property described in subsection (a) (other than real property that is subject to ~~section 2687 of title 10, section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note), or section 2905 of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note)~~ a base closure law, as that term is defined in section 101(a)(17) of title 10), for use at a public airport.

Section 131 of Military Construction Appropriation Act, 2003 (Public Law 107-249)

SEC. 131. (a) REQUESTS FOR FUNDS FOR ENVIRONMENTAL RESTORATION AT BRAC SITES IN FUTURE FISCAL YEARS.—In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year after fiscal year 2003, the amount requested for environmental restoration, waste management, and environmental compliance activities in such fiscal year with respect to military installations approved for closure or realignment under the base closure laws shall accurately reflect the anticipated cost of such activities in such fiscal year.

(b) BASE CLOSURE LAWS DEFINED.—In this section, the term “base closure laws” ~~means the following:~~

~~(1) Section 2687 of title 10, United States Code.~~

~~(2) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).~~

~~(3) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).~~ has the meaning given the term “base closure law” in section 101(a)(17) of title 10, United States Code.

National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160)

SEC. 1334. ENVIRONMENTAL EDUCATION OPPORTUNITIES PROGRAM.

* * * * *

(a)***

(k) DEFINITIONS.—For purposes of this section:

(1) The term “base closure law” means the following:

(A) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(C) The Defense Base Closure and Realignment Act of 2017.

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SEC. 2918. DEFINITIONS.

(a) SUBTITLE OF TITLE XXIX.—In this subtitle:

(1) The term “base closure law” means the following:

(A) The provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note.).

(C) The Defense Base Closure and Realignment Act of 2017.

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