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TITLE I—PROCUREMENT

Subtitle A – Authorization of Appropriations

Sections 101 through 105 would authorize appropriations for fiscal year 2014 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 2014.

Section 102(b) would authorize advance appropriations, in the total amount of $952,739,000, to fully fund a Virginia class submarine for fiscal year 2015.

Subtitle B – Specific Programs

Section 111 would allow the Secretary of the Navy to enter into a multiyear contract for E-2D aircraft for the Fiscal Year (FY) 2014 through 2018 program years for the Department of the Navy. The proposed Multiyear Procurement (MYP) (FY 2014-2018) will produce substantial savings and facilitate industrial stability.

The E-2D aircraft program is one of the core aviation programs and is approved through the current Future Years Defense Program. The Navy requirement for E-2D aircraft is well documented in the Capability Production Document validated March 3, 2009 by the Joint Requirements Oversight Council.

Changes to Existing Law: Section 111 proposal would make no changes to the text of existing law.

Section 112 would amend the statutory cost cap for the aircraft carrier designated as CVN 78 that was imposed by subsection (a)(1) of section 122 of the Fiscal Year 2007 National Defense Authorization Act (P.L. 109-364). The cost cap for CVN 78 is currently $11.755 billion, having been adjusted by the Secretary of the Navy in 2010 using the authority granted by subsection (b) of that section. This proposal raises the cost cap to the Program Manager's most likely Estimate at Completion (EAC) as reported in the 2011 Selected Acquisition Report (SAR), $12.877 billion.

This proposal would also clarify the legislative language in two points. It identifies the hull number of the lead aircraft carrier of the GERALD R. FORD class as CVN 78 and it redefines the cost cap baseline in dollars corresponding to the year the ship was ordered.

The Navy has phased its request for additional funds as they are needed. The President's Budget for FY 2014 requests $588.1 million in FY 2014, which will exceeds the current cap of $11.755 billion. The Navy and shipbuilder will continue to work to improve cost performance on

CVN 78 and to improve manufacturing and organizational performance for future aircraft carriers.

This proposal would also grant the Secretary of the Navy the authority to adjust the limitation amount for those costs attributable to correction of deficiencies attributable to the shipboard test program, since costs associated with first time integration and test of new developmental systems or components in the shipboard environment may be unknown.

Section 1023 of Public Law 111-84, the Fiscal Year 2010 National Defense Authorization Act, authorized a temporary reduction in the Nation's aircraft carrier force from 11 to 10 during the period between inactivation of USS ENTERPRISE (CVN 65) and commissioning of CVN 78. Congress recognized during consideration of that provision that the Navy was adding risk to our combatant commanders' ability to achieve their missions by temporarily reducing force structure during this period. Without this legislative relief in the cost cap, the Navy would be unable to take delivery of a completed ship.

Changes to Existing Law: **Section 112** proposal would make the following changes to section 122 of the John Warner National Defense Authorization Act for Fiscal Year 2007:

SEC. 122. ADHERENCE TO NAVY COST ESTIMATES FOR ~~CVN-21~~ CVN-78 CLASS OF AIRCRAFT CARRIERS.

(a) LIMITATION.—

(1) LEAD SHIP.—The total amount obligated or expended from funds appropriated or otherwise made available for Shipbuilding and Conversion, Navy, or for any other procurement account, for the aircraft carrier designated as ~~CVN-21~~ CVN-78 may not exceed ~~$10,500,000,000~~ $12,887,000,000 (as adjusted pursuant to subsection (b)).

(2) FOLLOW-ON SHIPS.--The total amount obligated or expended from funds appropriated or otherwise made available for Shipbuilding and Conversion, Navy, or for any other procurement account, for the construction of any ship that is constructed in the ~~CVN-21~~ CVN-78 class of aircraft carriers after the lead ship of that class may not exceed $8,100,000,000 (as adjusted pursuant to subsection (b)).

(b) ADJUSTMENT OF LIMITATION AMOUNT.--The Secretary of the Navy may adjust the amount set forth in subsection (a) for any ship constructed in the ~~CVN-21~~ CVN-78 class of aircraft carriers by the following:

(1) The amounts of increases or decreases in costs attributable to economic inflation after September 30, 2006.

(2) The amounts of increases or decreases in costs attributable to compliance with changes in Federal, State, or local laws enacted after September 30, 2006.

(3) The amounts of outfitting costs and post-delivery costs incurred for that ship.

(4) The amounts of increases or decreases in costs of that ship that are attributable to insertion of new technology into that ship, as compared to the technology baseline as it was defined in the approved acquisition program baseline estimate of December 2005.

(5) The amounts of increases or decreases to nonrecurring design and engineering cost attributable to achieving compliance with the cost limitation.

(6) The amounts of increases or decreases to cost required to correct deficiencies that may affect the safety of the ship and personnel or otherwise preclude the ship from safe operations and crew certification.

(7) The amounts of increases or decreases in costs of that ship that are attributable to the shipboard test program.

(c) LIMITATION ON TECHNOLOGY INSERTION COST ADJUSTMENT.—The Secretary of the Navy may use the authority under paragraph (4) of subsection (b) to adjust the amount set forth in subsection (a) for a ship referred to in that subsection with respect to insertion of new technology into that ship only if—

(1) the Secretary determines, and certifies to the congressional defense committees, that insertion of the new technology would lower the life-cycle cost of the ship; or

(2) the Secretary determines, and certifies to the congressional defense committees, that insertion of the new technology is required to meet an emerging threat and the Secretary of Defense certifies to those committees that such threat poses grave harm to national security.

(d) WRITTEN NOTICE OF CHANGE IN AMOUNT.—

(1) REQUIREMENT.—The Secretary of the Navy shall submit to the congressional defense committees each year, at the same time that the budget is submitted under section 1105(a) of title 31, United States Code, for the next fiscal year, written notice of any change in the amount set forth in subsection (a) during the preceding fiscal year that the Secretary has determined to be associated with a cost referred to in subsection (b).

(2) EFFECTIVE DATE.—The requirement in paragraph (1) shall become effective with the budget request for the year of procurement of the first ship referred to in subsection (a).

Section 113 seeks to eliminate a requirement for the Secretary of the Air Force to maintain all B-52 aircraft in a "common capability configuration."

The Department of Defense is concerned about the meaning of the undefined term "common capability configuration." The Department notes that this requirement was associated with the retirement of aircraft rather than modifications to aircraft that remain available to meet the needs of combatant commanders. Although the legislative history of the term focuses on availability of aircraft to meet combatant commanders' requirements for long-range conventional strike, the lack of a definition raises concerns about whether it could also apply to the aircraft's

nuclear capabilities or other modifications and upgrades on the fleet. The Department's proposal to delete the phrase would not affect the number of aircraft available to meet the combatant commanders' long range strike requirements.

In light of the ambiguity, retention of the phrase "common capability configuration" may result in larger reductions in the Intercontinental Ballistic Missile (ICBM) and Submarine Launched Ballistic Missile (SLBM) force structures, or may place the United States in jeopardy of violating its New START Treaty obligations. The New START Treaty requires the United States to limit its deployed ICBMs, SLBMs, and heavy bombers equipped for nuclear armaments to a total of no more than 700. The Treaty also imposes a further combined limit of no more than 800 deployed and non-deployed ICBM launchers, SLBM launchers and heavy bombers equipped for nuclear armaments. While the United States has the right to determine the composition of its own force structure, these "central limits" must be met no later than February 5, 2018; seven years following the Treaty's entry into force.

In the Fiscal Year 2013 Report on the Plan for the Nuclear Weapons Stockpile, Nuclear Weapons Complex, Nuclear Weapons Delivery Systems, and Nuclear Weapons Command and Control System Specified in section 1043 of the National Defense Authorization Act for Fiscal Year 2012 (aka "1043 Report") transmitted to Congress on May 7, 2012, the Secretary of Defense stated the Administration's intent to maintain a Triad consisting of ICBMs, SLBMs and nuclear-capable heavy bombers. As set forth in the 2010 Nuclear Posture Review (NPR), this force structure fully supports U.S. strategy and conforms to the Treaty's central limits.

Additionally, the NPR and the 1043 Report both note that it will be necessary to convert some B-52H aircraft to a non-nuclear capability in order to meet the New START Treaty central limits. In doing so, the Air Force remains committed to maintaining two B-52 wings with nuclear-capable aircraft, in addition to a wing of nuclear-capable B-2s. During Senate consideration of the New START Treaty, the Department indicated that it would maintain "up to 60 deployed heavy bombers" that were nuclear capable, while staying within the Treaty's central limits. Although the number of B-52Hs subject to conversion is currently unknown, the Department's plans do not call for any conversions or eliminations that would reduce the number of nuclear-capable heavy bombers to a level below that which is necessary to meet the requirements dictated by U.S. strategy.

The Treaty provides for the conversion of nuclear-capable heavy bombers by eliminating the capability of the converted aircraft to employ nuclear weapons. While the Department remains committed to maintaining the B-52 as a vital component of the nuclear Triad, the Air Force has developed a treaty-compliant method for converting a subset of the B-52H fleet to a non-nuclear role. The retention of nuclear-capable B-52s precludes the conversion of the entire fleet to a non-nuclear configuration. However, a substantial number of these aircraft will be converted to a non-nuclear configuration. This conversion process has no impact on the capability of the B-52 to employ the full range of conventional (non-nuclear) weapons, and will

serve as a one of several options the U.S. may leverage to downsize its strategic delivery vehicle force structure to Treaty-compliant levels.

Additionally, with an evolving global security environment, and a new defense strategy focusing on the Pacific Command's Area of Responsibility, new conventional long-range strike capabilities (such as the Combat Network Communications Technology or CONECT) are being considered for a portion of the B-52 force. In light of current fiscal challenges, modification of less than the entire B-52 fleet may well be the best way forward. Consequently, the "configuration" with regard to this technology may differ across the fleet.

Changes to Existing Law: Section 113 would amend section 131(a)(1) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2111), as amended by section 137(a)(1) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 32):

SEC. 131. BOMBER FORCE STRUCTURE.

(a) REQUIREMENT FOR B–52 FORCE STRUCTURE.—

(1) RETIREMENT LIMITATION.—During the B–52 retirement limitation period, the Secretary of the Air Force—

(A) may not retire more than 18 B–52 aircraft;

(B) shall maintain not less than 44 such aircraft as combat-coded aircraft;

(C) shall maintain ~~in a common capability configuration~~ a primary aircraft inventory of not less than 63 such aircraft, a backup aircraft inventory of not less than 11 such aircraft, and an attrition reserve aircraft inventory of not less than 2 such aircraft; and

(D) shall not keep any such aircraft referred to in subparagraph (C) in a status considered excess to the requirements of the possessing command and awaiting disposition instructions.

(2) B–52 RETIREMENT LIMITATION PERIOD.—For purposes of paragraph (1), the B–52 retirement limitation period is the period beginning on the date of the enactment of this Act [Oct. 17, 2006] and ending on the date that is the earlier of—

(A) January 1, 2018; and

(B) the date as of which a long-range strike replacement aircraft with equal or greater capability than the B–52H model aircraft has attained initial operational capability status.

(3) DEFINITIONS.—For purposes of paragraph (1):

(A) The term 'primary aircraft inventory' means aircraft assigned to meet the primary aircraft authorization to—

(i) a unit for the performance of its wartime mission;

(ii) a training unit primarily for technical and specialized training for crew personnel or leading to aircrew qualification;

(iii) a test unit for testing of the aircraft or its components for purposes of research, development, test and evaluation, operational test and evaluation, or to support testing programs; or

(iv) meet requirements for special missions not elsewhere classified.

(B) The term 'backup aircraft inventory' means aircraft above the primary aircraft inventory to permit scheduled and unscheduled depot level maintenance, modifications, inspections, and repairs, and certain other mitigating circumstances without reduction of aircraft available for the assigned mission.

(C) The term 'attrition reserve aircraft inventory' means aircraft required to replace anticipated losses of primary aircraft inventory due to peacetime accidents or wartime attrition.

(4) TREATMENT OF RETIRED AIRCRAFT.—Of the aircraft retired in accordance with paragraph (1)(A), the Secretary of the Air Force may use not more than 2 such aircraft for maintenance ground training.

(b) LIMITATION ON RETIREMENT PENDING REPORT ON BOMBER FORCE STRUCTURE.—

(1) LIMITATION.—No funds authorized to be appropriated for the Department of Defense may be obligated or expended for retiring any of the 93 B–52H bomber aircraft in service in the Air Force as of the date of the enactment of this Act [Oct. 17, 2006] until 60 days after the date on which the Secretary of the Air Force submits the report specified in paragraph (2).

(2) REPORT.—A report specified in this subsection is a report submitted by the Secretary of the Air Force to the Committees on Armed Services of the Senate and the House of Representatives on the amount and type of bomber force structure of the Air Force, including the matters specified in paragraph (4).

(3) AMOUNT AND TYPE OF BOMBER FORCE STRUCTURE DEFINED.—In this subsection, the term ''amount and type of bomber force structure'' means the number of each of the following types of aircraft that are required to carry out the national security strategy of the United States:

(A) B–2 bomber aircraft.

(B) B–52H bomber aircraft.

(C) B–1 bomber aircraft.

(4) MATTER TO BE INCLUDED.—A report under paragraph (2) shall include the following:

(A) The plan of the Secretary of the Air Force for the modernization of the B–52, B–1, and B–2 bomber aircraft fleets.

(B) The amount and type of bomber force structure for the conventional mission and strategic nuclear mission in executing two overlapping ''swift defeat'' campaigns.

(C) A justification of the cost and projected savings of any reductions to the B–52H bomber aircraft fleet as a result of the retirement of the B–52H bomber aircraft covered by the report.

(D) The life expectancy of each bomber aircraft to remain in the bomber force structure.

(E) The capabilities of the bomber force structure that would be replaced, augmented, or superseded by any new bomber aircraft.

(5) PREPARATION OF REPORT.—A report under paragraph (2) shall be prepared by the Institute for Defense Analyses and submitted to the Secretary of the Air Force for submittal by the Secretary in accordance with that paragraph.

Section 114 would repeal the requirement for the Secretary of the Air Force to maintain at least 74 of the KC-135E aircraft retired after September 30, 2006 in a condition that would allow recall of the aircraft to future service in the Air Force Reserve, Air National Guard, or active forces aerial refueling force structure.

The new defense strategy does not support the need to keep 74 KC-135E aircraft in Type 1000 (recallable) storage. Current AF analysis demonstrates the most stressing tanker demand can be met with existing operational fleet force structure. The AF is fully committed to funding the KC-46A program, with 34 deliveries programmed by FY18, further mitigating the need to maintain legacy KC-135E aircraft in Type 1000 storage.

Recalling the KC-135Es from storage for use now in the operational fleet would be costly and time consuming, with total cost dependent upon variables such as individual aircraft condition, availability of parts, and regeneration of modification lines. At a minimum, all aircraft would require programmed depot maintenance, engine overhaul, and numerous avionics upgrades (~$75 million/aircraft) to convert from a KC-135E into an operational KC-135R.

The fiscal year (FY) 2007, and subsequent FY 2009 language, limits the flexibility of the AF to manage the inactive KC-135E fleet. To maintain an aircraft in Type 1000 storage, recurring re-preservation is required every four years from initial 309th Aerospace Maintenance and Regeneration Group (AMARG) induction at a cost of $39,116 per aircraft (FY 2012), totaling $2,894,584 across the Future Years Defense Program (FYDP). Additionally, these 74 aircraft remain unavailable as a source of parts for the active fleet or for Foreign Military Sales

due to the requirement to maintain the aircraft in a recallable condition. In FY 2011 alone, KC-135s in less restrictive storage at AMARG supplied 841 parts to the active fleet, generating $66.6 million in cost avoidance to the AF. KC-135s continue to advance in age, presenting supply demands and increased failure rates for parts previously not expected to fail. As removal of parts from KC-135s in less restrictive types of storage at AMARG renders them progressively less useful, access to the Type 1000 storage aircraft becomes more critical. Diminishing manufacturing sources, component parts obsolescence, and long procurement lead times often leave AMARG reclamation as the only option to support the operational fleet part requirements. Finally, Foreign Military Sales interest exists for KC-135 aircraft deemed excess. The ability to offer excess KC-135Es for allied nation support will continue to build partnership capability.

Changes to Existing Law: Section 114 would make the following changes to section 135 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2114), as amended by section 131 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 122 Stat. 4358):

SEC. 135. LIMITATION ON RETIREMENT OF KC–135E AIRCRAFT DURING FISCAL YEAR 2007.

(a) LIMITATION.—The number of KC–135E aircraft retired by the Secretary of the Air Force during fiscal year 2007 may not exceed 29.

~~(b) TREATMENT OF RETIRED AIRCRAFT.—The Secretary of the Air Force shall maintain at least 74 of the KC–135E aircraft retired by the Secretary after September 30, 2006, in a condition that would allow recall of that aircraft to future service in the Air Force Reserve, Air National Guard, or active forces aerial refueling force structure.~~

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Section 201 would authorize appropriations for fiscal year 2014 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 2014.

Section 202

TITLE III—OPERATION AND MAINTENANCE

Subtitle A – Authorization of Appropriations

Section 301 would authorize appropriations for fiscal year 2014 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 2014.

Subtitle B – Program Matters

Section 311 would amend section 44310 of title 49, United States Code, relating to the expiration of chapter 443 of that title, Aviation Insurance program, to extend the authority of the Secretary of Transportation to provide insurance and reinsurance. Extension is necessary to bring the statute in line with current practices that allow for the most efficient means of procurement of transportation by the Department of Defense and to preclude lapses of this wartime essential program. The Government-provided insurance for commercial air carriers providing transportation under contract to the Department of Defense is essential during the activation of the Civil Reserve Air Fleet in order to meet national defense needs. The proposal does not affect the Federal Aviation Administration (FAA) premium program established in section 44302(f) of that title, which has a separate termination date established by Public Law 112-95, section 701.

Changes to Existing Law: Section 311 would make the following changes to section 44310 of title 49, United States Code:

§ 44310. Ending effective date

(a) IN GENERAL.—The authority of the Secretary of Transportation to provide insurance and reinsurance under ~~this chapter~~ any provision of this chapter other than section 44305 is not effective after December 31, 2013.

(b) INSURANCE OF UNITED STATES GOVERNMENT PROPERTY.—The authority of the Secretary of Transportation to provide insurance and reinsurance for a department, agency, or instrumentality of the United States Government under section 44305 is not effective after December 31, 2018.

Section 312 would amend section 53912 of title 46, United States Code, relating to the expiration of Chapter 539, War Risk Insurance Program. Under this program, the Secretary of Transportation, with the approval of the President, may provide insurance and reinsurance to American and foreign vessels that provide service to the U.S. Government. The insurance covers loss or damage caused by war risks. Whenever it appears to the Secretary that the insurance cannot be obtained on reasonable terms and conditions from the commercial insurance market, then such war risk insurance for vessels may be provided by the Secretary only on the condition that such vessels are available for the U.S. Government in time of war or national emergency. This insurance program is vital to the existence of the Voluntary Intermodal Sealift Agreement (VISA) program. The VISA is a partnership between the U.S. Government and the maritime industry to provide the Department of Defense with assured access to commercial sealift and intermodal capacity to support the emergency deployment and sustainment of U.S.

military forces. Intermodal capacity includes dry cargo ships, equipment, terminal facilities and intermodal management services.

Changes to Existing Law: Section 312 would make the following change to section 53912 of title 46, United States Code:

§ 53912. Expiration date

The authority of the Secretary of Transportation to provide insurance and reinsurance under this chapter expires on ~~December 31, 2015~~ December 31, 2020.

Section 313 Section 1017 of the John Warner National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2007 (Public Law 109-364), directs the Secretary of Defense, acting through the United States Transportation Command (USTRANSCOM), to provide a report to the Committees on Armed Services of the Senate and the House of Representatives regarding overhaul, repair, and maintenance performed on covered vessels of each offeror of carriage to which the acquisition policy applies. The acquisition policy establishes a criterion that gives preference to carriers using domestic ship repair facilities over carriers that use foreign ones. In accordance with the law, USTRANSCOM submitted four reports.

In practice, the acquisition policy has not driven carrier behavior for several reasons and has resulted in a negative impact for acquisition professionals. For example, in calendar year 2009, there were seven solicitations and seven one-time-only cargo movements. In response to these requests for offers, 24 carriers expressed interest in offering transportation services. Of these, 13 carriers used exclusively domestic repair service; 3 carriers used a mix of domestic and foreign repairs and 8 carriers were not considered because they did not/could not provide data. In many instances the carriers didn't own the vessels and the vessel owners refused to release the information.

Based on the data from the last five years, most of the Jones Act carriers already were using domestic ship repair facilities with few exceptions so it is unlikely that Section 1017 is responsible for driving behavior. The few carriers that use foreign repair facilities are the larger companies that will have minor work done in domestic repair facilities but will continue to have major overhaul work in foreign repair facilities. One of these carriers, Matson, provided a comment in response to the interim rule that it contributes to the industrial base by purchasing new vessels that are U.S. built, i.e. four new $506 million ships and $25 million ship conversion. These vessels will not require significant expenditure in U.S. repair facilities for several years. The primary rationale for using foreign repair facilities is driven by schedule availability, cost, and suitability of shipyards. One example was provided where ORCA vessels can only be serviced at NASSCO or at a shipyard in Victoria, British Columbia.

While the Department of Defense supports the preference for carriers using domestic repair facilities policy, we must continue to use carriers that utilize foreign repair facilities for various reasons. First, the number of carriers offering on a solicitation is limited--usually no more than 3 offerors, sometimes only one carrier offers and in many instances only the carriers that use foreign repair facilities are the offerors. Second, the evaluation preference for use of domestic shipyards is considered along with other price and non-price factors in making an award decision. Some examples of non-price factors include past performance, membership in the Voluntary Intermodal Sealift Agreement (VISA), technical (required delivery date, capacity, and availability) and socio-economic considerations. Finally, there are many instances when the carriers using foreign repair facilities offering on a solicitation are the only offerors that meet the technical requirements.

In the five years that this law has been in effect, there has not been a documented instance where the evaluation preference for domestic ship repair has been a discriminator or tie breaker due to: (1) all offerors under an RFP had all work done in domestic shipyards, (2) an offeror who might have received evaluation preference was determined to be unacceptable, or (3) another technical or cost factor had more weight. All contracting officers submitting data for the annual Report to Congress confirm that, all factors being equal, they would have awarded to the offeror who primarily used domestic repair facilities given the opportunity.

The acquisition policy and reporting requirement has not resulted in increasing the industrial base or had any practical effect on carrier decisions in use of shipyards. The requirement has increased the information collection burden for offerors and acquisition professionals with no appreciable benefit and has effectively limited competition in the instances where offerors lease vessels and cannot provide the required data. The requirement should be repealed.

Changes to Existing Law: Section 313 would make the following changes to the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364):

~~**SEC. 1017. OBTAINING CARRIAGE BY VESSEL: CRITERION REGARDINGOVERHAUL, REPAIR, AND MAINTENANCE OF VESSELS IN THE UNITED STATES.**~~

~~(a) ACQUISITION POLICY.—In order to maintain the national defense industrial base, the Secretary of Defense shall issue an acquisition policy that establishes, as a criterion required to be considered in obtaining carriage by vessel of cargo for the Department of Defense, the extent to which an offeror of such carriage had overhaul, repair, and maintenance work for covered vessels of the offeror performed in shipyards located in the United States.~~

~~(b) COVERED VESSELS.—A vessel is a covered vessel of an offeror under this section if the vessel is—~~

~~(1) owned, operated, or controlled by the offeror; and~~

~~(2) qualified to engage in the carriage of cargo in the coastwise or non-contiguous trade under section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 883), section 12106 of title 46, United States Code, and section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802).~~

~~(c) APPLICATION OF POLICY.—The acquisition policy shall include rules providing for application of the policy to covered vessels as expeditiously as is practicable based on the nature of carriage obtained, and by no later than June 1, 2007.~~

~~(d) REGULATIONS.—~~

~~(1) IN GENERAL.—The Secretary shall prescribe regulations as necessary to carry out the acquisition policy and submit such regulations to the Committees on Armed Services of the Senate and the House of Representatives, by not later than June 1, 2007.~~

~~(2) INTERIM REGULATIONS.—~~

~~(A) IN GENERAL.—The Secretary may prescribe interim regulations as necessary to carry out the acquisition policy. For this purpose, the Secretary is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code.~~

~~(B) SUBMISSION TO CONGRESS.—Upon the issuance of interim regulations under this paragraph, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives the interim regulations and a description of the acquisition policy developed (or being developed) under subsection (a).~~

~~(C) EXPIRATION.—All interim regulations prescribed under the authority of this paragraph that are not earlier superseded by final regulations shall expire no later than June 1, 2007~~.

~~(e) ANNUAL REPORT.—The Secretary, acting through the United States Transportation Command, shall annually submit to the Committees on Armed Services of the Senate and the House of Representatives a report regarding overhaul, repair, and maintenance performed on covered vessels of each offeror of carriage to which the acquisition policy applies.~~

~~(f) DEFINITIONS.—In this section:~~

~~(1) FOREIGN SHIPYARD.—The term ''foreign shipyard'' means a shipyard that is not located in the United States.~~

~~(2) UNITED STATES.—The term ''United States'' means—~~

~~(A) any State of the United States; and~~

~~(B) Guam.~~

Section 314 would amend the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C. 221 note), titled "Annual Submission of Information Regarding Information Technology Capital Assets". Current language of that section is not in line with Department of Defense (DoD) acquisition policy and creates a burden when reporting DoD high-threshold IT Capital Assets to the Congress. This amendment would align DoD high-threshold IT Capital Asset reporting with the Department's Major Automated Information Systems (MAIS) reporting and its Exhibit 300 reporting to the Office of Management and Budget.

Changes to Existing Law: Section 314 would amend section 351 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C. 221 note) as follows:

SEC. 351. ANNUAL SUBMISSION OF INFORMATION REGARDING INFORMATION TECHNOLOGY CAPITAL ASSETS.

(a) REQUIREMENT TO SUBMIT INFORMATION. - Not later than 30 days after the date on which the President submits the budget for a fiscal year to Congress pursuant to section 1105 of title 31, United States Code, the Secretary of Defense shall submit to Congress information on the following information technology capital assets, including information technology capital assets that are a national security system, of the Department of Defense:

(1) Information technology capital assets that have an estimated total cost for the fiscal year for which the budget is submitted ~~$30,000,000~~ (as computed in fiscal year 2000 constant dollars) in excess of $32,000,000 or an estimated total cost for the future-years defense program for which the budget is submitted (as computed in fiscal year ~~2003~~2000 constant dollars) in excess of ~~$120,000,000~~ $378,000,000, for all expenditures, for all increments, regardless of the appropriation and fund source, directly related to the assets definition, design, development, deployment, sustainment, and disposal.

(2) Information technology capital assets not covered by paragraph (1) that have been determined by the Chief Information Officer of the Department of Defense to be significant investments.

(b) REQUIRED INFORMATION FOR HIGH-THRESHOLD ASSETS- With respect to each information technology capital asset described in subsection (a)(1), the Secretary of Defense shall include the following information:

(1) The name and identifying acronym of the information technology capital asset.

(2) The date of initiation of the asset.

(3) A summary of performance measurements and metrics.

(4) The total amount of funds, by appropriation account, appropriated and obligated for prior fiscal years, with a specific breakout of such information for the two preceding fiscal years.

(5) The funds, by appropriation account, requested for the next fiscal year.

(6) The name of each prime contractor and the work to be performed.

(7) Program management and management oversight information.

(8) The original baseline cost and most current baseline information.

(9) Information regarding compliance with the provisions of law enacted or amended by the Government Performance Results Act of 1993 (Public Law 103-62; 107 Stat. 285) and the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104-106; 110 Stat. 642).

(c) REQUIRED INFORMATION FOR SIGNIFICANT INVESTMENTS. - With respect to each information technology capital asset not covered by paragraph (1) of subsection (a), but covered by paragraph (2) of that subsection, the Secretary of Defense shall include such information in a format that is appropriate to the current status of such asset.

(d) TOTAL COST DETERMINATIONS- In estimating the total cost for a fiscal year or total life cycle cost of an information technology capital asset, the Secretary of Defense shall consider research and development costs, procurement costs, and operation and maintenance costs related to the information technology capital asset.

(e) DEFINITIONS- In this section:

(1) The term `information technology' has the meaning given that term in section 11101 of title 40, United States Code.

(2) The term `capital asset' has the meaning given that term in Office of Management and Budget Circular A-11.

(3) The term `national security system' has the meaning given that term in section 11103 of title 40, United States Code.

Section 315 would allow for limited operation and maintenance (O&M) funds to be used to cover travel and other incidental expenses, so long as the total amount of those expenses does not exceed 10 percent of the value of the underlying Humanitarian and Civic Assistance (HCA) activity. The Department of Defense (DoD) estimates that this 10 percent authority would enable the HCA program to be more fully and effectively utilized within existing budget authority.

This proposal would allow needed flexibility for combant commanders to effectively utilize HCA funds. Currently, use of HCA funds to cover travel expenses is prohibited by 10 U.S.C. 401. As a result, commanders are unable to provide effective oversight of activity implementation.

Section 1203(a)(3) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (P.L. 109-364) repealed the authority for DoD to use O&M funds for the costs of travel, transportation, and subsistence expenses incurred under the HCA program. The practical result of this statutory change has been a reluctance among combatant commands to utilize HCA funds in an effort to preserve scarce resources and a failure to complete required evaluation of the scope of individual HCA activities and overall program evaluation.

A February 2012 Government Accountability Office (GAO) report, 12-359, *Project Evaluations and Better Information Sharing Needed to Manage the Military's Efforts*, identified "limited program evaluations" as a weakness in key humanitarian assistance programs. It noted, "the absence of post-project evaluations for determining the effects of DOD's efforts" is a key weakness in implementation of the HCA program. GAO-12-359 p.11 It further noted that, "Agency managers need performance information to ensure that programs meet intended goals, assess the efficiency of processes, and promote continuous improvement. Without consistently evaluating its projects, DOD lacks information to demonstrate tangible positive or negative effects of many of its projects." *Id*. at p.22

This proposal would allow for the implementation of the GAO recommendation to: "Employ a risk-based approach to review and modify project evaluation requirements for the HCA program to measure the long-term effects of projects and take steps to ensure compliance with the requirements." *Id*. at p.42

Budget Implications: If enacted, this proposal would not increase the budgetary requirements of the Department of Defense. While this proposal would draw from funds available to execute HCA activities, those activities completed would now be assessed for effectiveness and funding for those assessments would come from within the DOD HCA program.

Changes to Existing Law: Section 315 would amend section 401 of title 10, United States Code, as follows:

§ 401. Humanitarian and civic assistance provided in conjunction with military operations

(a)(1) ***

*** * * * * * ***

(c)(1) Expenses incurred as a direct result of providing humanitarian and civic assistance under this section to a foreign country shall be paid for out of funds specifically appropriated for such purpose.

(2) Expenses covered by paragraph (1) include travel, transportation, and subsistence expenses of Department of Defense personnel for purposes of evaluating the scope of a humanitarian or civic assistance activity under this section or conducting assessments of such activities, except that the total value of such expenses incurred with respect to any activity may not exceed 10 percent of the activity value.

~~(4)~~ (3) Nothing in this section may be interpreted to preclude the incurring of minimal expenditures by the Department of Defense for purposes of humanitarian and civic assistance out of funds other than funds appropriated pursuant to paragraph (1), except that funds appropriated to the Department of Defense for operation and maintenance (other than funds appropriated pursuant to such paragraph) may be obligated for humanitarian and civic assistance under this section only for incidental costs of carrying out such assistance.

Section 316 would authorize the Secretary of the Army to manage and operate concession contracts supporting the Army National Military Cemeteries, principally Arlington National Cemetery (ANC), for the purpose of providing transportation and interpretive services to visitors, as well as to retain receipt to support cemetery activities without further appropriation.

The National Park Service (NPS) has comparable authority under the National Park Service Concession Management Improvement Act of 1998. Using its authority, the NPS manages tour bus and interpretive services at ANC, but a recent lapse in concessions at ANC highlights the need for the Army to assume responsibility for these contracts: The company operating the TourMobile®, under concession contract authority with NPS, vacated their contract and terminated operations on October 31, 2011. The loss of transportation services on ANC property left visitors without means of transportation to tour within the Cemetery. When operating normally, the NPS mission set focuses on specific sites (Kennedy Gravesite, Tomb of the Unknowns, and the Lee Mansion) and does not support providing visitors access to, or understanding of, the entirety of ANC grounds.

NPS awarded a new concession contract to a vendor in order continue tour bus and interpretive services at ANC in February 2012. However, the loss of tour bus services from November 2011 through February 2012 left a gap in these services for ANC's visitors during the interim. Any future gap in coverage would adversely affect the expected 4,000,000 annual visitors and adversely affect ANC's mission to fully honor the service and sacrifices of the deceased Service members buried or inurned in the Cemetery.

This proposal would allow ANC to bring tour bus and interpretive services under its management oversight and contract with a vendor to operate a concession service to provide visitors with tour bus and interpretive services. This, in turn, would reduce the risk that these types of services would be lost to future visitors. In addition to reliably maintaining existing levels of service to the public, the proposal would allow the Army to extend transportation and interpretive services to underserved sections of the cemetery. This would support a much larger population of veterans and their families who visit loved ones or wish to explore the entirety of the history preserved at ANC.

As part of the proposal, the Secretary of the Army would be given the authority to receive and utilize revenue derived from concessions. This would allow ANC to offset its costs of managing the concessions contracts, and to expand services offered for veterans, families and visitors in order to better facilitate their visitor experiences.

This proposal seeks to explicitly authorize the Army to award concession contracts for tour bus and interpretive services and use receipts authority to receive and utilize revenues. This objective does not seek to augment, supplement, or eliminate ANC's current appropriation funding source. Without this express legal authority, the Army cannot enter into contracts for these type services, nor can it receive and use any revenue derived from these type operations.

As a principal destination for visitors to the National Capital Region, the loss of tour bus services at ANC is viewed as a threat to the Cemetery's mission and operations. Loss of continuity of services, regardless of who is responsible for contracts, is an ANC issue and any ANC issue is necessarily an Army issue. This proposal allows the Army to assume the responsibility to manage services to the high expectations of the public and the Congress. ANC is a high-visibility organization that provides dignified honors and burial services to our Nation's fallen heroes and to other eligible individuals. Further, ANC annually serves as a venue for approximately 6,000 wreath laying and other honor ceremonies sponsored by national and international leaders, local and national veteran's organizations, and private individuals. The inability to move visitors in and around ANC, as happened in 2011, has an adverse affect on Cemetery operations and detracts from the prestige of the Cemetery in the eyes of the visiting public.

Budget Implications: This proposal does not present budget implications for the Army or DoD through related security appropriations. This does affect the MILCON/VA/Related Agencies – Cemeterial Expenses, Army non-security appropriation. The following tables show the five year personnel and cost requirements for the Army and the other military departments.

RESOURCE REQUIREMENTS ($MILLIONS) (offset to fund legislative proposal and incorporated in President's budget submission)									
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation From**	**Program Element**	**Budget Activity**	**Dash-1 Line Item**

MILCON/VA/Related Agencies CEA	0.163	0.247	0.247	0.247	0.247	21X1805	0920100A	0	086
Army	0	0	0	0	0	N/A	N/A	N/A	N/A
Total	0.163	0.247	0.247	0.247	0.247	-	-	-	-

NUMBER OF PERSONNEL AFFECTED									
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation From**	**Program Element**	**Budget Activity**	**Dash-1 Line Item**
MILCON/VA/Related Agencies CEA	2	2	2	2	2	21X1805	0920100A	0	086
Army	0	0	0	0	0	N/A	N/A		
Total	2	2	2	2	2	-	-		

ANC expects to fund costs for two Government Full-Time Equivalent (FTE) positions and support contracts to provide project management, training, and fiscal stewardship within its current appropriation: MILCON/VA/Related Agencies – Cemeterial Expenses, Army (21X1805).

The following table shows ANC's annual net revenue based to be derived under the selected COA.

($ in Thousands)

Cost Factors:	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**5 YR Total**
Personnel (2 FTE)	**130.1**	**197.1**	**197.1**	**197.1**	**197.1**	**918.5**
Other Services	**33.0**	**50.0**	**50.0**	**50.0**	**50.0**	**233.0**
Total Costs	**163.1**	**247.1**	**247.1**	**247.1**	**247.1**	**1,151.5**
Revenue from Revenue Sharing:	**229.4**	**458.9**	**458.9**	**458.9**	**458.9**	**2,065**
Annual Net Revenue:	**66.3**	**211.8**	**211.8**	**211.8**	**211.8**	**913.5**

Revenue generated under a revenue sharing agreement with the concession vendor is projected using a similar revenue sharing formula used by NPS with their concession vendor. Once concession authority is enacted, ANC would establish a revenue sharing rate as part of its contract negotiations with the new vendor.

By conducting operations under a no-cost concession contract with a vendor, ANC incurs minimal financial commitment. Revenue sharing between the vendor and ANC would enable the vendor to make a profit while enabling ANC to further invest in tour bus operations,

interpretive message development, and visitor outreach activities to enhance and better facilitate their experience.

The vendor, under concession contract with ANC, would be required to make investments for personnel, vehicles and equipment, maintenance, facilities and other support costs in much the same way that the current NPS vendor operates their current concession contract.

Changes to Existing Law: Section 316 would add a new section to title 10, United States Code. The proposed new section is set forth in the legislative text above.

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 2014.

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 2014.

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 2014.

Section 413 would prescribe the end strengths for dual-status technicians of the reserve components of the Army and Air Force for fiscal year 2014.

Section 414 would prescribe the maximum end strengths for non-dual status technicians of the reserve components of the Army and Air Force for fiscal year 2014.

Section 415 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 2014 for military personnel.

TITLE V—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

Section 501 would align the statutory procedures for a board convened to consider officers with sufficient qualifying service for early removal from the reserve active-status list with the procedures required for an active-duty selective early retirement board (SERB). The statutes governing active-duty SERBs, sections 638 and 638a of title 10, U.S. Code, provide the Secretary of the military department concerned discretion to limit the zone of officers eligible for selective early retirement based on date of rank and to exclude officers with approved voluntary or involuntary retirements from consideration. The proposed amendment will extend this authority to reserve selective early removal boards.

This proposal will enable the Secretaries of the military departments to exclude recently promoted officers with limited time-in-grade from consideration—allowing these officers to contribute to their Service in their new rank and either advance in rank and responsibility, or transfer to the retired list with sufficient time-in-grade to retire at their current grade. With regard to excluding officers pending retirement from the list of eligible officers, requiring reserve selective early removal boards to consider officers already pending voluntary or involuntary retirement wastes resources and hampers efficient manpower planning. If the target selection number for the board is calculated taking pending retirements into account, and officers already pending retirement are also selected by the board, the overall needed attrition rate will not be met. On the other hand, if pending retirements are not taken into account in establishing the target selection rate, but some officers pending retirement are not picked, the overall needed attrition rate will be exceeded. The proposal would eliminate this inefficiency.

In addition, the proposal would clarify that the Secretary of a military department must provide the selective early removal board a target number of officers that *may* be selected for removal, rather than the current language, which could be read to require the board to select the exact number specified by the Secretary. This change further harmonizes this section with the procedures governing active –duty SERBs.

Changes to Existing Law: Section 501 would make the following changes to section 14704 of title 10, U.S. Code:

§ 14704. Selective early removal from the reserve active-status list

(a)BOARDS TO RECOMMEND OFFICERS FOR REMOVAL FROM RESERVE ACTIVE-STATUS LIST.—(1)Whenever the Secretary of the military department concerned determines that there are in any reserve component under the jurisdiction of the Secretary too many officers in any grade and competitive category who have at least 30 years of service computed under section 14706 of this title or at least 20 years of service computed under section 12732 of this title, the Secretary may convene a selection board under section 14101(b) of this title to consider ~~all~~ officers on that list who are in that grade and competitive category, and who have that amount of service, for the purpose of recommending officers by name for removal from the reserve active-status list ~~in the number specified by the Secretary by each grade and competitive category~~.

(2) The Secretary of the military department concerned shall specify the number of officers described in paragraph (1) that a selection board convened under section 14101(b) of this title may recommend for removal from the reserve active-status list.

(3) When the Secretary of the military department concerned submits a list of officers to a selection board convened under section 14101(b) of this title to consider officers for selection for removal from the reserve active-status list under this section, such list (except as provided in paragraph (4)) shall include each officer on the reserve active-status list in the same grade and competitive category whose position on the reserve active-status list is between that of the most junior officer in that grade and competitive category whose name is submitted to the board and that of the most senior officer in that grade and competitive category whose name is submitted to the board.

(4) A list under paragraph (3) may not include an officer in that grade and competitive category who has been approved for voluntary retirement or who is to be involuntary retired under any provision of law during the fiscal year in which the selection board is convened or during the following fiscal year.

(b) SEPARATION OF OFFICERS SELECTED.—In the case of an officer recommended for separation in the report of a board under subsection (a), the Secretary may separate the officer in accordance with section 14514 of this title.

(c) REGULATIONS.—The Secretary of the military department concerned shall prescribe regulations for the administration of this section.

Subtitle B—Reserve Component Management

Section 511, The Inactive National Guard (ING) is the National Guard counterpart to the Individual Ready Reserve (IRR). The ING is currently underutilized because it is subject to unique restrictions that do not apply to the IRR, among which is the restriction on officer participation. Because the authorizing statute (32 U.S.C. 303) does not support the transfer of officers from active status in the Selected Reserve (SELRES) to the ING, officers are not able to take a mid-career break in service to pursue activities inconsistent with a drilling status. They are also unable to remain productively affiliated with the Army National Guard (ARNG) after

completing a period of active service. Both negatively affect the long-term retention of officers in the Selected Reserve.

Managing and retaining commissioned officers in the Selected Reserve is a continuing challenge. Allowing officers to benefit from the ING authority, similar to enlisted personnel, will add more flexibility to the management of their part-time military career. Through further enhancing the Service's "continuum of service" concept and allowing commissioned officers to take a pause in their careers, long term retention will be improved. Additionally, retaining these trained and qualified officers at very little cost reduces the expense of training new soldiers if the need to expand the force arises. The extension of the ING authority to allow officer participation will also improve the ING pilot project (see FY14 proposal #025) by creating a larger test pool.

Budgetary Implications: None. The Army National Guard has included the costs of this proposal in its FY 2014 budget and within the FY 2014-2018 FYDP. Costs for this proposal are limited to annual muster pay and medical readiness costs for the additional personnel transferred to the ING at any given time. The Army National Guard estimates that no more than 300 officers would be in ING status at any time.

Changes to Existing Law: Section 511 legislation would amend chapter 3 of title 32, United States Code, to add a new section 311**.** The text of that new section appears in full in the legislative language at the top of this proposal.

Section 512, The Inactive National Guard (ING) is the National Guard counterpart to the Individual Ready Reserve (IRR). However, the ING is underutilized because it is subject to unique restrictions. This legislative proposal would create a temporary authority (pilot program) which, if successful, has the potential to transform the existing ING from an entity that does not meet the needs of an operational reserve into an effective tool that dramatically improves the readiness of National Guard units and develops a regimentalized pool of mobilization assets within the National Guard.

As part of the National Guard's transition to an operational reserve, a redesigned ING will allow the National Guard to manage certain long term medically non-deployable Army National Guard personnel (medical readiness category "3B" – non-available for longer than six months) outside the Selected Reserve, retain as mobilization assets enlisted National Guard personnel who have satisfied their existing military service obligation, as well as to continue to maintain inactive personnel within the ING structure. The capacity to manage certain non-deployable members outside of unit structure will help to better maintain the unit integrity that is crucial to combat effectiveness as well as to facilitate collective training throughout the "train-ready-deploy-reset" cycle, increasing both the cohesion and combat effectiveness of National Guard units. This legislative proposal would remove the blanket restriction on providing compensation to ING members, allowing the National Guard to better self-populate its deploying units, transfer certain non-deployable (injured) members out of Selective Reserve unit slots, and

allow National Guard members in the Ready Reserve (outside of the Selected Reserve) to stay affiliated with their units by maintaining their records at the unit level. The goal of this pilot project is to demonstrate proof that this concept can deliver the anticipated benefits at or below the anticipated cost level.

The National Guard is the economical option to maintain combat power in a constrained cost environment and, as overall force levels are reduced, the National Guard will increasingly function as reservoir of trained and ready military power. Updating the National Guard's legal structure to support the "operational reserve" concept is crucial to allow the National Guard to continue to shoulder its share of the Nation's defense and participate effectively and continuously in the "train-ready-deploy-reset" cycle. Managing non-deployable members outside of unit structure is crucial to maintaining unit integrity and readiness (and thereby combat effectiveness) of any unit-based force. This is especially true of rotationally-utilized ground combat forces which cannot effectively function over time on the basis of volunteerism (supplying ready manpower to soon-to-deploy forces by decrementing the readiness of later-to-deploy forces).

The *status quo* obscures significant shortcomings in the structure of the Ready Reserve, imposes unnecessary risk, and provides for inefficient utilization of military manpower. "Unreadiness" is trapped inside National Guard units; currently, all non-deployable members must be maintained within unit structures.

The following describes the specific legislative changes, applicable for the period of the pilot program, to accomplish this transformation:

- 10 U.S.C. 101(d)(4) – Changes the definition of "active status" to exclude only members of the ING on the inactive status list, not all Service members in the ING.
- 10 U.S.C. 10141(b) – Changes the definition of "inactive status" to include only those Service members on the new ING inactive status list, instead of including all members of the ING.
- 10 U.S.C. 12732(b)(3) – Excludes time spent on the new ING inactive status list from being counted in the calculation for retirement pay, instead of excluding all time spent in the ING.
- 32 U.S.C. 303 – Allows the two-way transfer of Service members between the drilling National Guard and the ING without regard for whether or not they were formerly enlisted in the ING. as well as imposing numerical caps on participation during the pilot project (which will end on December 31, 2016).
- 37 U.S.C. 206 – The prohibition on paying service members in the ING is modified so that it only applies to Service members assigned to the new ING inactive status list.

Budgetary Implications: All additional costs could be absorbed by the Army National Guard (ARNG) without any additional appropriations. Most of the projected costs are based on the increased participation rate in the Selected Reserve (backfilling the Selected Reserve with participating soldiers once certain non-participating soldiers are transferred to the ING). Based on adding an estimated 1,000 Soldiers a year to the ING, up to a maximum of 4,000, first year costs are estimated at $3.41 million with a total cost over four fiscal years (FYs) of $13.3 million.

	RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation**	**Budget Activity**	**Program Element**	**Dash-1 Line Item**
Air Force	0	0	0	0	0	N/A			
Navy	N/A	N/A	N/A	N/A	N/A	N/A			
Marines	N/A	N/A	N/A	N/A	N/A	N/A			
Army	3.33	4.05	4.37	1.06	N/A	National Guard Personnel, Army	1	0904901A	080
Army	0.079	0.16	0.24	0.02	N/A	Operation & Maintenance, Army National Guard	1	0522092A	133
Total	3.41	4.21	4.61	1.08	N/A				

NUMBER OF PERSONNEL AFFECTED*						
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation To**
Air Force	0	0	0	0	0	N/A
Navy	N/A	N/A	N/A	N/A	N/A	N/A
Army	1,000	2,000	3,000	4,000	N/A	
Total	1,000	2,000	3,000	4,000	N/A	

*There are no personnel affected or budgetary implications for the Air Force/Air National Guard as they have both stated no intention of using the ING authority.

Direct costs are based on new muster costs and medical screening costs for ING Soldiers. The increase in expenses as a result of this legislation is expected to be small. Additional expenses due to increased Pay Group A participation (pay, RPA, etc.) of soldiers recruited to backfill the slots vacated by soldiers transferring to the active status ING for medical board proceedings may be offset by savings in reduced requirements for Initial Entry Training (IET) and Schools if most

of the soldiers recruited to backfill have prior military service. That said, we have accounted for these increased participation costs, which make up the overwhelming amount of the resources required. Additional savings in administrative overhead, by managing the ING locally rather than regionally, may contribute to the overall cost savings. Implementation as a pilot program will allow the overall savings impact to be quantified.

Changes to Existing Law: Section 512 would make changes to title 10, 32, and 37 of the United States Code as follows:

TITLE 10, UNITED STATES CODE

§ 101. Definitions

(a) IN GENERAL.— ***

(b) PERSONNEL GENERALLY.—***

(c) RESERVE COMPONENTS.—***

(d) DUTY STATUS.—The following definitions relating to duty status apply in this title:

(1) The term "active duty" means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

(2) The term "active duty for a period of more than 30 days" means active duty under a call or order that does not specify a period of 30 days or less.

(3) The term "active service" means service on active duty or full-time National Guard duty.

(4) The term "active status" means the status of a member of a reserve component who is not in the inactive Army National Guard or inactive Air National Guard, on an inactive status list, or in the Retired Reserve. <u>However, in the case of members of the Army National Guard of the United States during any period during which there is an inactive status list for the inactive Army National Guard under section 303(d) of title 32, such term means the status of such a member who is not assigned to the inactive status list of the inactive Army National Guard, on another inactive status list, or in the Retired Reserve, and in the case of members of the Air National Guard of the United States during any period during which there is an inactive status list for the inactive Air National Guard under section 303(d) of title 32, such term means the status of such a</u>

member who is not assigned to the inactive status list of the inactive Air National Guard, on another inactive status list, or in the Retired Reserve.

(5) The term “full-time National Guard duty” means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of title 32 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

(6)(A) The term “active Guard and Reserve duty” means active duty performed by a member of a reserve component of the Army, Navy, Air Force, or Marine Corps, or full-time National Guard duty performed by a member of the National Guard pursuant to an order to full-time National Guard duty, for a period of 180 consecutive days or more for the purpose of organizing, administering, recruiting, instructing, or training the reserve components.

(B) Such term does not include the following:

(i) Duty performed as a member of the Reserve Forces Policy Board provided for under section 10301 of this title.

(ii) Duty performed as a property and fiscal officer under section 708 of title 32.

(iii) Duty performed for the purpose of interdiction and counter-drug activities for which funds have been provided under section 112 of title 32.

(iv) Duty performed as a general or flag officer.

(v) Service as a State director of the Selective Service System under section 10(b)(2) of the Military Selective Service Act (50 U.S.C.App. 460(b)(2)).

(7) The term “inactive-duty training” means--

(A) duty prescribed for Reserves by the Secretary concerned under section 206 of title 37 or any other provision of law; and

(B) special additional duties authorized for Reserves by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

Such term includes those duties when performed by Reserves in their status as members of the National Guard.

(e) FACILITIES AND OPERATIONS.—***

(f) RULES OF CONSTRUCTION.—***

(g) REFERENCE TO TITLE 1 DEFINITIONS.—***

* * * * *

§ 10141. Ready Reserve; Standby Reserve; Retired Reserve: placement and status of members; training categories

(a) There are in each armed force a Ready Reserve, a Standby Reserve, and a Retired Reserve. Each Reserve shall be placed in one of those categories.

(b) Reserves who are on the inactive status list of a reserve component, or who are assigned to the inactive Army National Guard or the inactive Air National Guard, are in an inactive status. Members in the Retired Reserve are in a retired status. All other Reserves are in an active status.

(c) As prescribed by the Secretary concerned, each reserve component except the Army National Guard of the United States and the Air National Guard of the United States shall be divided into training categories according to the degrees of training, including the number and duration of drills or equivalent duties to be completed in stated periods. The designation of training categories shall be the same for all armed forces and the same within the Ready Reserve and the Standby Reserve.

(d)(1) During any period during which there is an inactive status list for the inactive Army National Guard under section 303(d) of title 32—

(A) the first sentence of subsection (b) shall apply only with respect to Reserves assigned to the inactive Army National Guard who are assigned to the inactive status list; and

(B) the exclusion of the Army National Guard of the United States under the first sentence of subsection (c) shall be inapplicable.

(2) During any period during which there is an inactive status list for the inactive Air National Guard under section 303(d) of title 32—

(A) the first sentence of subsection (b) shall apply only with respect to Reserves assigned to the inactive Air National Guard who are assigned to the inactive status list; and

(B) the exclusion of the Air National Guard of the United States under the first sentence of subsection (c) shall be inapplicable.

* * * * *

§ 12732. Entitlement to retired pay: computation of years of service

(a) Except as provided in subsection (b), for the purpose of determining whether a person is entitled to retired pay under section 12731 of this title, the person's years of service are computed by adding the following:

(1) The person's years of service, before July 1, 1949, in the following:

(A) The armed forces.

(B) The federally recognized National Guard before June 15, 1933.

(C) A federally recognized status in the National Guard before June 15, 1933.

(D) The National Guard after June 14, 1933, if his service therein was continuous from the date of his enlistment in the National Guard, or his Federal recognition as an officer therein, to the date of his enlistment or appointment, as the case may be, in the National Guard of the United States, the Army National Guard of the United States, or the Air National Guard of the United States.

(E) The Navy Reserve Force.

(F) The Naval Militia that conformed to the standards prescribed by the Secretary of the Navy.

(G) The National Naval Volunteers.

(H) The Army Nurse Corps, the Navy Nurse Corps, the Nurse Corps Reserve of the Army, or the Nurse Corps Reserve of the Navy, as it existed at any time after February 2, 1901.

(I) The Army under an appointment under the Act of December 22, 1942 (ch. 805, 56 Stat. 1072).

(J) An active full-time status, except as a student or apprentice, with the Medical Department of the Army as a civilian employee--

(i) in the dietetic or physical therapy categories, if the service was performed after April 6, 1917, and before April 1, 1943; or

(ii) in the occupational therapy category, if the service was performed before appointment in the Army Nurse Corps or the Women's Medical Specialist Corps and before January 1, 1949, or before appointment in the Air Force before January 1, 1949, with a view to designation as an Air Force nurse or medical specialist.

(2) Each one-year period, after July 1, 1949, in which the person has been credited with at least 50 points on the following basis:

(A) One point for each day of—

(i) active service; or

(ii) full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a

prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned;

if that service conformed to required standards and qualifications.

(B) One point for each attendance at a drill or period of equivalent instruction that was prescribed for that year by the Secretary concerned and conformed to the requirements prescribed by law, including attendance under section 502 of title 32.

(C) Points at the rate of 15 a year for membership--

(i) in a reserve component of an armed force,

(ii) in the Army or the Air Force without component, or

(iii) in any other category covered by subsection (a)(1) except a regular component.

(D) Points credited for the year under section 2126(b) of this title.

(E) One point for each day on which funeral honors duty is performed for at least two hours under section 12503 of this title or section 115 of title 32, unless the duty is performed while in a status for which credit is provided under another subparagraph of this paragraph.

For the purpose of clauses (A), (B), (C), (D), and (E), service in the National Guard shall be treated as if it were service in a reserve component, if the person concerned was later appointed in the National Guard of the United States, the Army National Guard of the United States, the Air National Guard of the United States, or as a Reserve of the Army or the Air Force, and served continuously in the National Guard from the date of his Federal recognition to the date of that appointment.

(3) The person's years of active service in the Commissioned Corps of the Public Health Service.

(4) The person's years of active commissioned service in the National Oceanic and Atmospheric Administration (including active commissioned service in the Environmental Science Services Administration and in the Coast and Geodetic Survey).

(b) The following service may not be counted under subsection (a):

(1) Service (other than active service) in an inactive section of the Organized Reserve Corps or of the Army Reserve, or in an inactive section of the officers' section of the Air Force Reserve.

(2) Service (other than active service) after June 30, 1949, while on the Honorary Retired List of the Navy Reserve or of the Marine Corps Reserve.

(3) Service in the inactive National Guard (for any period other than a period during which there is an inactive status list for the inactive National Guard under section 303(d) of title 32) and service while assigned to the inactive status list of the inactive National Guard (for any period during which there is an inactive status list for the inactive National Guard under section 303(d) of title 32).

(4) Service in a non-federally recognized status in the National Guard.

(5) Service in the Fleet Reserve or the Fleet Marine Corps Reserve.

(6) Service as an inactive Reserve nurse of the Army Nurse Corps established by the Act of February 2, 1901 (ch. 192, 31 Stat. 753), as amended, and service before July 1, 1938, as an inactive Reserve nurse of the Navy Nurse Corps established by the Act of May 13, 1908 (ch. 166, 35 Stat. 146).

(7) Service in any status other than that as commissioned officer, warrant officer, nurse, flight officer, aviation midshipman, appointed aviation cadet, or enlisted member, and that described in clauses (I) and (J) of subsection (a)(1).

(8) Service in the screening performed pursuant to section 10149 of this title through electronic means, regardless of whether or not a stipend is paid the member concerned for such service under section 433a of title 37.

TITLE 32, UNITED STATES CODE

§ 303. Active and inactive enlistments and transfers

(a) Under regulations to be prescribed by the Secretary of the Army, a person qualified for enlistment in the active Army National Guard may be enlisted in the inactive Army National Guard for a single term of one or three years. Under regulations prescribed by the Secretary of the Air Force, a person qualified for enlistment in the active Air National Guard may be enlisted in the inactive Air National Guard for a single term of one or three years.

(b) ~~Under such~~ (1) Except as provided in paragraph (2) and under such regulations as the Secretary of the Army may prescribe, an enlisted member of the active Army National Guard, not formerly enlisted in the inactive Army National Guard, may be transferred to the inactive Army National Guard. ~~Under such~~ Except as provided in paragraph (2) and under such regulations as the Secretary of the Air Force may prescribe, an enlisted member of the active Air National Guard, not formerly enlisted in the inactive Air National Guard, may be transferred to the inactive Air National Guard. Under such regulations as the Secretary concerned may prescribe, a person enlisted in or transferred to the inactive Army National Guard or the inactive

Air National Guard may be transferred to the active Army National Guard or the active Air National Guard, as the case may be.

(2) During the period beginning on the date of the enactment of this paragraph and ending on December 31, 2016, an enlisted member of the active Army National Guard may be transferred to the inactive Army National Guard without regard to whether the member was formerly enlisted in the inactive Army National Guard and an enlisted member of the active Air National Guard may be transferred to the inactive Air National Guard without regard to whether the member was formerly enlisted in the inactive Air National Guard.

(c) In time of peace, no enlisted member may be required to serve for a period longer than that for which he enlisted in the active or inactive National Guard.

(d)(1) The Secretary of the Army and the Secretary of the Air Force may maintain an active status list and an inactive status list of members in the inactive Army National Guard and the inactive Air National Guard, respectively.

(2) The total number of Army National Guard and Air National Guard members, combined, on the active status lists and the inactive status lists assigned to the inactive National Guard may not exceed 10,000 during any period.

(3) The total number of Army National Guard and Air National Guard members, combined, on the active status lists of the inactive National Guard may not exceed 4,000 during any period.

(4) The authority under this subsection expires at the close of December 31, 2016.

TITLE 37, UNITED STATES CODE

§ 206. Reserves; members of National Guard: inactive-duty training

(a) Under regulations prescribed by the Secretary concerned, and to the extent provided for by appropriations, a member of the National Guard or a member of a reserve component of a uniformed service who is not entitled to basic pay under section 204 of this title, is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay—

(1) for each regular period of instruction, or period of appropriate duty, at which the member is engaged for at least two hours, including that performed on a Sunday or holiday;

(2) for the performance of such other equivalent training, instruction, duty, or appropriate duties, as the Secretary may prescribe; or

(3) for a regular period of instruction that the member is scheduled to perform but is unable to perform because of physical disability resulting from an injury, illness, or disease incurred or aggravated—

(A) in line of duty while performing—

(i) active duty; or

(ii) inactive-duty training;

(B) while traveling directly to or from that duty or training (unless such injury, illness, disease, or aggravation of an injury, illness, or disease is the result of the gross negligence or misconduct of the member); or

(C) in line of duty while remaining overnight immediately before the commencement of inactive-duty training, or while remaining overnight, between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training.

(b) The regulations prescribed under subsection (a) for each uniformed service, the National Guard, and each of the classes of organization of the reserve components within each uniformed service, may be different. The Secretary concerned shall, for the National Guard and each of the classes of organization within each uniformed service, prescribe—

(1) minimum standards that must be met before an assembly for drill or other equivalent period of training, instruction, duty, or appropriate duties may be credited for pay purposes, and those standards may require the presence for duty of officers and enlisted members in numbers equal to or more than a minimum number or percentage of the unit strength for a specified period of time with participation in a prescribed kind of training;

(2) the maximum number of assemblies or periods of other equivalent training, instruction, duty, or appropriate duties, that may be counted for pay purposes in each fiscal year or in lesser periods of time; and

(3) the minimum number of assemblies or periods of other equivalent training, instruction, duty, or appropriate duties that must be completed in stated periods of time before the members of units or organizations can qualify for pay.

(c) A person enlisted in the inactive National Guard is not entitled to pay under this section. <u>However, with respect to any period during which there is an inactive status list for the inactive National Guard under section 303(d) of title 32, the limitation in the preceding sentence shall be applicable to persons assigned to the inactive status list of the inactive National Guard, rather than to persons enlisted in the inactive National Guard.</u>

(d)(1) Except as provided in paragraph (2), this section does not authorize compensation for work or study performed by a member of a reserve component or by a member of the National Guard while not in Federal service in connection with correspondence courses of a uniformed service.

(2) A member of the Selected Reserve of the Ready Reserve may be paid compensation under this section at a rate and under terms determined by the Secretary of Defense, but not to exceed the rate otherwise applicable to the member under subsection (a), upon the member's successful completion of a course of instruction undertaken by the member using electronic-based distributed learning methodologies to accomplish training requirements related to unit readiness or mobilization, as directed for the member by the Secretary concerned. The compensation may be paid regardless of whether the course of instruction was under the direct control of the Secretary concerned or included the presence of an instructor.

(3) The prohibition in paragraph (1), including the prohibition as it relates to a member of the National Guard while not in Federal service, applies to—

(A) any work or study performed on or after September 7, 1962, unless that work or study is specifically covered by the exception in paragraph (2); and

(B) any claim based on that work or study arising after that date.

(e) A member of the National Guard or of a reserve component of the uniformed services may not be paid under this section for more than four periods of equivalent training, instruction, duty, or appropriate duties performed during a fiscal year instead of the member's regular period of instruction or regular period of appropriate duty during that fiscal year.

(f) A member of the Individual Ready Reserve is not entitled to compensation under this section for participation in screening for which the member is paid a stipend under section 433a of this title.

Section 513 would amend section 709 of title 32, United States Code, to reiterate the military nature of dual status National Guard technician employment, as codified by the National Guard Technician Act (NGTA) of 1968 (Pub. L. No. 90-486, § 2(1), 82 Stat. 755 (codified at 32 U.S.C. 709)), by providing that complaints of discrimination by dual status National Guard technicians shall be processed in the same manner as complaints of discrimination arising from military members of the National Guard.

Current National Guard Bureau policy provides for the processing of National Guard technician discrimination complaints under the Federal sector process contained in 29 C.F.R. §§1614 *et seq*., for complaints arising under title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, the Americans with

Disabilities Act of 1990, or the Equal Pay Act of 1963. This process, however, has proven to be ineffective and untimely in practice for four reasons. First, National Guard technicians are legally distinct from other Federal Civil service employees because National Guard technicians are a nominal class of Federal employees to whom Congress never intended to extend complete civil service protections. Second, applying the Federal sector process to dual status military technicians is contrary to more than 25 recent Federal court decisions, which have acknowledged the military nature of technician employment and applied the doctrine of intra-military immunity to hold that the courts lack subject matter jurisdiction to hear these technicians' discrimination complaints. Third, these judicial decisions are in accordance with the NGTA and current Department of Defense policy, which provides: "The military nature of the technician program is paramount over all other considerations . . . ." Finally, as discussed in the following paragraph, the Federal sector process is unenforceable against the State-controlled National Guard entities that are alleged to have engaged in discrimination against National Guard technicians.

Under the enforcement paradigm for the Federal sector process, the Equal Employment Opportunity Commission's orders attempting to redress discrimination against National Guard technicians (dual status or non-dual status) are simply unenforceable to the extent that they either direct a Federal agency to compel compliance from State National Guard officials who are not subject to Federal command or supervisory authority, or direct a Federal agency to take an employment action that is reserved by 32 U.S.C. 709 to the State adjutants general. Notwithstanding this amendment, DoD will continue to have an effective enforcement mechanism against these State-controlled National Guard entities because even though they are not subject to Federal command or supervisory authority, they are subject to the Federal military discrimination regulations that are enforced against State officials, in part, under title VI of the Civil Rights Act of 1964. Accordingly, the proposal will clarify that complaints of wrongful discrimination by the approximately 49,500 National Guard dual status technicians will be processed in the same manner as complaints by the approximately 465,000 military members of the Air and Army National Guards.

Budget Implications: The proposal is cost neutral as it is funded within existing lines, would not require additional support structure, and is not expected to increase the number of claims. Existing legal and EEO staffs, and Alternate Dispute Resolution processes using existing resources, shall be used throughout the complaint process. Additionally, members would remain in the same duty and pay status whether performing daily technician duties or while involved in the processing a complaint.

Changes to Existing Law: Section 513 would amend section 719 of title 32, United States Code, as follows:

§ 709. Technicians: employment, use, status

(a) Under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, and subject to subsections (b) and (c), persons may be employed as technicians in—

(1) the organizing, administering, instructing, or training of the National Guard;

(2) the maintenance and repair of supplies issued to the National Guard or the armed forces; and

(3) the performance of the following additional duties to the extent that the performance of those duties does not interfere with the performance of the duties described by paragraphs (1) and (2):

(A) Support of operations or missions undertaken by the technician's unit at the request of the President or the Secretary of Defense.

(B) Support of Federal training operations or Federal training missions assigned in whole or in part to the technician's unit.

(C) Instructing or training in the United States or the Commonwealth of Puerto Rico or possessions of the United States of—

(i) active-duty members of the armed forces;

(ii) members of foreign military forces (under the same authorities and restrictions applicable to active-duty members providing such instruction or training);

(iii) Department of Defense contractor personnel; or

(iv) Department of Defense civilian employees.

(b) Except as authorized in subsection (c), a person employed under subsection (a) must meet each of the following requirements:

(1) Be a military technician (dual status) as defined in section 10216(a) of title 10.

(2) Be a member of the National Guard.

(3) Hold the military grade specified by the Secretary concerned for that position.

(4) While performing duties as a military technician (dual status), wear the uniform appropriate for the member's grade and component of the armed forces.

(c)(1) A person may be employed under subsection (a) as a non-dual status technician (as defined by section 10217 of title 10) if the technician position occupied by the person has been designated by the Secretary concerned to be filled only by a non-dual status technician.

(2) The total number of non-dual status technicians in the National Guard is specified in section 10217(c)(2) of title 10.

(d) The Secretary concerned shall designate the adjutants general referred to in section 314 of this title to employ and administer the technicians authorized by this section.

(e) A technician employed under subsection (a) is an employee of the Department of the Army or the Department of the Air Force, as the case may be, and an employee of the United States. However, a position authorized by this section is outside the competitive service if the

technician employed in that position is required under subsection (b) to be a member of the National Guard.

(f) Notwithstanding any other provision of law and under regulations prescribed by the Secretary concerned—

(1) a person employed under subsection (a) who is a military technician (dual status) and otherwise subject to the requirements of subsection (b) who—

(A) is separated from the National Guard or ceases to hold the military grade specified by the Secretary concerned for that position shall be promptly separated from military technician (dual status) employment by the adjutant general of the jurisdiction concerned; and

(B) fails to meet the military security standards established by the Secretary concerned for a member of a reserve component under his jurisdiction may be separated from employment as a military technician (dual status) and concurrently discharged from the National Guard by the adjutant general of the jurisdiction concerned;

(2) a technician may, at any time, be separated from his technician employment for cause by the adjutant general of the jurisdiction concerned;

(3) a reduction in force, removal, or an adverse action involving discharge from technician employment, suspension, furlough without pay, or reduction in rank or compensation shall be accomplished by the adjutant general of the jurisdiction concerned;

(4) a right of appeal which may exist with respect to paragraph (1), (2), or (3) shall not extend beyond the adjutant general of the jurisdiction concerned; and

(5) a technician shall be notified in writing of the termination of his employment as a technician and, unless the technician is serving under a temporary appointment, is serving in a trial or probationary period, or has voluntarily ceased to be a member of the National Guard when such membership is a condition of employment, such notification shall be given at least 30 days before the termination date of such employment.

(g) Sections 2108, 3502, 7511, and 7512 of title 5 do not apply to a person employed under this section.

(h) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of law, the Secretary concerned may prescribe the hours of duty for technicians. Notwithstanding sections 5542 and 5543 of title 5 or any other provision of law, such technicians shall be granted an amount of compensatory time off from their scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime work, and shall not be entitled to compensation for such work.

(i) The Secretary concerned may not prescribe for purposes of eligibility for Federal recognition under section 301 of this title a qualification applicable to technicians employed

under subsection (a) that is not applicable pursuant to that section to the other members of the National Guard in the same grade, branch, position, and type of unit or organization involved.

(j) A complaint of wrongful discrimination by a person employed under subsection (a) who is a military technician (dual status) and otherwise subject to the requirements of subsection (b) shall be considered a complaint of wrongful discrimination by a member of the armed forces.

Subtitle C – Education and Training

Section 521 would continue current protections in law that preserve the eligibility of a Selected Reserve service member and their qualified dependents to use GI Bill educational benefits for which they were previously qualified before being involuntarily separated from the Selected Reserve due to end strength reductions or force management actions.

A 2008 amendment to 10 U.S.C. 16133 provides continuation of the entitlement through 30 September, 2014. This proposal extends that protection through December 31, 2018 for the projected scope of drawdown actions of all reserve components of all services.

Achieving this benefit protection targets requires two separate changes in law:

1) Change to 10 U.S.C. 16133 preserves eligibility for Montgomery GI Bill benefits administered by the services as a retention incentive.
2) Change to 38 U.S.C. 3012 preserves eligibility for Montgomery GI Bill benefits administered by the Veterans Administration.

The provisions to protect Montgomery GI Bill eligibility update legislative amendments initially approved in section 4419 of the National Defense Authorization Act for Fiscal Year 1993 (Pub. L. 102-484).

As it did in 1993, this proposal is intended to preserve the eligibility of members of the reserve component to use their GI bill benefits if they are involuntarily separated from the reserve, without cause, due to end strength reductions or force management actions. No new benefits are authorized. A unilateral decision of the military to break an employment agreement should not dissolve the associated education benefits.

In return for a commitment to serve for a set period of time, members receive 36 months of Montgomery GI bill benefits. The program is used as a retention incentive, since continued membership in the Selected Reserve is required to utilize those benefits. If a member is involuntarily separated from the selective reserve they would otherwise lose their eligibility to use their Montgomery GI bill benefits.

Budget Implications: Funding for GI Bill educational benefits for Reserve Component members is calculated and paid in 3 ways: Members pay $1,200 that establishes the eligibility to use MGIB-AD benefits. Services pay an eligibility fee for each member that establishes the eligibility to use MGIB-SR benefits. Additionally, the Services pay an actuarial charge each year based on how many members are using their MGIB-SR educational benefits.

When calculating the cost of this proposal vice the status quo, consider the two GI Bill programs independently:

1) Statutory protections of Montgomery GI Bill educational assistance currently exist through FY 14. If those protections were allowed to sunset at that time, vice implementing this extension, each member involuntary separated would lose their ability to claim any remaining educational assistance. 10% of reserve component members use educational assistance. The median member utilizes $17,000 in 36 months. Assuming the median member has half their eligibility remaining, each member would lose access to $8,500 in educational assistance. Calculating the take rate across the population, the involuntary separation of 1,000 reserve component members could save the treasury $850,000 without this protection. The budget table below assumes 3,000 reserve component members involuntary separated in FY 15 – 17

2) The cost estimate below includes direct costs to reserve components (MGIB-SR costs.) Both reserve benefits and active duty kickers are funded through DoD's EBF (Education Benefits Fund.) However, the drawdown does create some additional eligibility on MGIB-AD active duty kicker benefits. As a result, increased costs from additional eligibility for active duty kickers (MGIB-AD costs) are also calculated. The additional eligibility is due to making future ineligibles into eligibles through involuntary termination. Had the drawdown not taken place, we would otherwise have expected a small number of terminations without benefits. Now that the drawdown is taking place, a small portion of that small number of terminations will be involuntarily separated and eligible to receive benefits.

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
	3.3	3.3	3.3	3.3	3.3	3850 Milpers	01	100 Education
	.9	.9	.9	.9	.9	3700 Milpers	01	100 Education
Total	**4.2**	**4.2**	**4.2**	**4.2**	**4.2**			

Changes to Existing Law: Section 521 would make the following changes to existing law:

TITLE 10, UNITED STATE CODE

§ 16133. Time limitation for use of entitlement

(a) Except as provided in subsection (b), the period during which a person entitled to educational assistance under this chapter may use such person's entitlement expires on the date the person is separated from the Selected Reserve.

(b)(1) In the case of a person--

(A) who is separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct incurred on or after the date on which such person became entitled to educational assistance under this chapter; or

(B) who, on or after the date on which such person became entitled to educational assistance under this chapter ceases to be a member of the Selected Reserve during the period beginning on October 1, 1991, and ending on December 31, 2001, or the period beginning on October 1, 2007, and ending on ~~September 30, 2014~~ December 31, 2018, by reason of the inactivation of the person's unit of assignment or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to section 10143(a) of this title,

the period for using entitlement prescribed by subsection (a) shall be determined without regard to ~~clause (2) of~~ such subsection.

(2) The provisions of section 3031(f) of title 38 shall apply to the period of entitlement prescribed by subsection (a).

(3) The provisions of section 3031(d) of title 38 shall apply to the period of entitlement prescribed by subsection (a) in the case of a disability incurred in or aggravated by service in the Selected Reserve.

(4) In the case of a member of the Selected Reserve of the Ready Reserve who serves on active duty pursuant to an order to active duty issued under section 12301(a), 12301(d), 12301(g), 12302, or 12304 of this title--

(A) the period of such active duty service plus four months shall not be considered in determining the expiration date applicable to such member under subsection (a); and

(B) the member may not be considered to have been separated from the Selected Reserve for the purposes of ~~clause (2) of~~ such subsection by reason of the commencement of such active duty service.

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TITLE 38, UNITED STATE CODE

§ 3012. Basic educational assistance entitlement for service in the Selected Reserve

(a) Except as provided in subsection (d) of this section, each individual--

(1) who--

(A) after June 30, 1985, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces and--

(i) serves an obligated period of active duty of at least two years of continuous active duty in the Armed Forces, subject to subsection (b) of this section, characterized by the Secretary concerned as honorable service; and

(ii) subject to subsection (b) of this section and beginning within one year after completion of the service on active duty described in subclause (i) of this clause, serves at least four years of continuous duty in the Selected Reserve during which the individual participates satisfactorily in training as required by the Secretary concerned;

(B) as of December 31, 1989, is eligible for educational assistance under chapter 34 of this title and was on active duty at any time during the period beginning on October 19, 1984, and ending on July 1, 1985, continued on active duty without a break in service and--

(i) after June 30, 1985, serves at least two years of continuous active duty in the Armed Forces, subject to subsection (b) of this section, characterized by the Secretary concerned as honorable service; and

(ii) after June 30, 1985, subject to subsection (b) of this section and beginning within one year after completion of such two years of service, serves at least four continuous years in the Selected Reserve during which the individual participates satisfactorily in training as prescribed by the Secretary concerned; or

(C) as of December 31, 1989, was eligible for educational assistance under chapter 34 of this title and--

(i) was not on active duty on October 19, 1984;

(ii) reenlists or reenters on a period of active duty after October 19, 1984; and

(iii) on or after July 1, 1985--

(I) serves at least two years of continuous active duty in the Armed Forces, subject to subsection (b) of this section, characterized by the Secretary concerned as honorable service; and

(II) subject to subsection (b) of this section and beginning within one year after completion of such two years of service, serves at least four continuous years in the Selected Reserve during

which the individual participates satisfactorily in training as prescribed by the Secretary concerned;

(2) who completes the requirements of a secondary school diploma (or equivalency certificate), or successfully completes (or otherwise receives academic credit for) the equivalent of 12 semester hours in a program of education leading to a standard college degree, before applying for benefits under this section; and

(3) who, after completion of the service described in clause (1) of this subsection--

(A) is discharged from service with an honorable discharge, is placed on the retired list, or is transferred to the Standby Reserve or an element of the Ready Reserve other than the Selected Reserve after service in the Selected Reserve characterized by the Secretary concerned as honorable service; or

(B) continues on active duty or in the Selected Reserve;

is entitled to basic educational assistance under this chapter.

(b)(1)(A) The requirement of two years of service under clauses (1)(A)(i) and (1)(B)(i) of subsection (a) of this section is not applicable to an individual who is discharged or released, during such two years, from active duty in the Armed Forces (i) for a service-connected disability, (ii) for a medical condition which preexisted such service on active duty and which the Secretary determines is not service connected, (iii) for hardship, (iv) in the case of an individual discharged or released after 20 months of such service, for the convenience of the Government, (v) involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, (vi) for a physical or mental condition that was not characterized as a disability, as described in section 3011(a)(1)(A)(ii)(I) of this title, or (vii) by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10).

(B) The requirement of four years of service under clauses (1)(A)(ii) and (1)(B)(ii) of subsection (a) of this section is not applicable to an individual--

(i) who, during the two years of service described in clauses (1)(A)(i) and (1)(B)(i) of subsection (a) of this section, was discharged or released from active duty in the Armed Forces for a service-connected disability, by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10), for a medical condition which preexisted such service on active duty and which the Secretary determines is not service connected, or for a physical or mental condition not characterized as a disability, as described in section 3011(a)(1)(A)(ii)(I) of this title, if the individual was obligated, at the beginning of such two years of service, to serve such four years of service;

(ii) who, during the four years of service described in clauses (1)(A)(ii) and (1)(B)(ii) of subsection (a) of this section, is discharged or released from service in the Selected Reserve (I) for a service-connected disability, (II) for a medical condition which preexisted the individual's becoming a member of the Selected Reserve and which the

Secretary determines is not service connected, (III) for hardship, (IV) in the case of an individual discharged or released after 30 months of such service, for the convenience of the Government, (V) involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, (VI) for a physical or mental condition not characterized as a disability, as described in section 3011(a)(1)(A)(ii)(I) of this title, or (VII) by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10); or

(iii) who, before completing the four years of service described in clauses (1)(A)(ii) and (1)(B)(ii) of subsection (a) of this section, ceases to be a member of the Selected Reserve during the period beginning on October 1, 1991, and ending on September 30, 1999, or the period beginning on October 1, 201**3**, and ending on December 31, 2018, by reason of the inactivation of the person's unit of assignment or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to section 10143(a) of title 10.

(2) After an individual begins service in the Selected Reserve within one year after completion of the service described in clause (A)(i) or (B)(i) of subsection (a)(1) of this section, the continuity of service of such individual as a member of the Selected Reserve shall not be considered to be broken--

(A) by any period of time (not to exceed a maximum period prescribed by the Secretary concerned by regulation) during which the member is not able to locate a unit of the Selected Reserve of the member's Armed Force that the member is eligible to join or that has a vacancy; or

(B) by any other period of time (not to exceed a maximum period prescribed by the Secretary concerned by regulation) during which the member is not attached to a unit of the Selected Reserve that the Secretary concerned, pursuant to regulations, considers to be inappropriate to consider for such purpose.

(c)(1) Except as provided in paragraph (2), the basic pay of any individual described in subsection (a)(1)(A) of this section who does not make an election under subsection (d)(1) of this section shall be reduced by $100 for each of the first 12 months that such individual is entitled to such pay.

(2) In the case of an individual covered by paragraph (1) who is a member of the Selected Reserve, the Secretary of Defense shall collect from the individual an amount equal to $1,200 not later than one year after completion by the individual of the two years of service on active duty providing the basis for such entitlement. The Secretary of Defense may collect such amount through reductions in basic pay in accordance with paragraph (1) or through such other method as the Secretary of Defense considers appropriate.

(3) Any amount by which the basic pay of an individual is reduced under this subsection shall revert to the Treasury and shall not, for purposes of any Federal law, be considered to have been received by or to be within the control of such individual.

(d)(1) An individual described in subsection (a)(1)(A) of this section may make an election not to receive educational assistance under this chapter. Any such election shall be made at the time the individual initially enters on active duty as a member of the Armed Forces. Any individual who makes such an election is not entitled to educational assistance under this chapter.

(2) An individual who after December 31, 1976, receives a commission as an officer in the Armed Forces upon graduation from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy is not eligible for educational assistance under this section.

(3) An individual who after December 31, 1976, receives a commission as an officer in the Armed Forces upon completion of a program of educational assistance under section 2107 of title 10 is not eligible for educational assistance under this section if the individual enters on active duty--

(A) before October 1, 1996; or

(B) after September 30, 1996, and while participating in such program received more than $3,400 for each year of such participation.

(e)(1) An individual described in subclause (I) or (III) of subsection (b)(1)(B)(ii) of this section may elect entitlement to basic educational assistance under section 3011 of this title, based on an obligated period of active duty of two years, in lieu of entitlement to assistance under this section.

(2) An individual who makes the election described in paragraph (1) of this subsection shall, for all purposes of this chapter, be considered entitled to educational assistance under section 3011 of this title and not under this section. Such an election is irrevocable.

(f)(1) Any individual eligible for educational assistance under this section who does not make an election under subsection (d)(1) may contribute amounts for purposes of receiving an increased amount of basic educational assistance as provided for under section 3015(g) of this title. Such contributions shall be in addition to any reductions in the basic pay of such individual under subsection (c).

(2) An individual covered by paragraph (1) may make the contributions authorized by that paragraph at any time while on active duty, but not more frequently than monthly.

(3) The total amount of the contributions made by an individual under paragraph (1) may not exceed $600. Such contributions shall be made in multiples of $20.

(4) Contributions under this subsection shall be made to the Secretary of the military department concerned. That Secretary shall deposit any amounts received as contributions under this subsection into the Treasury as miscellaneous receipts.

(g)(1) The Secretary concerned shall inform any member of the Armed Forces who has not completed that member's initial service (as described in paragraph (2)) and who indicates the intent to be discharged or released from such service for the convenience of the Government of

the minimum service requirements for entitlement to educational assistance benefits under this chapter. Such information shall be provided to the member in a timely manner.

(2) The initial service referred to in paragraph (1) is the initial obligated period of active duty (described in subparagraph (A)(i) or (B)(i) of subsection (a)(1)) or the period of service in the Selected Reserve (described in subparagraphs (A)(ii) or (B)(ii) of subsection (a)(1)).

Section 522 would authorize the School of Advanced Military Studies (SAMS) senior-level course (SLC) at the Army Command and General Staff College (CGSC) to offer Joint Professional Military Education (JPME) Phase II instruction and credit, resulting in time and money saved.

Currently, SAMS SLC is not authorized to award graduates JPME phase II credit, like the U.S. Army War College and other Services' senior level schools. The lack of statutory authority for the SAMS SLC to award JPME Phase II credit disadvantages its graduates who must incur additional time in school and the Army which incurs significant travel and transportation expenses to send these officers to the ten-week Joint Combined Warfighting School in Norfolk, VA.

When this proposal is enacted, the Joint Staff J-7 (Joint Education and Doctrine Division) will conduct certification for SAMS SLC. A pre-visit by the J-7 has determined all educational aspects are in place to properly conduct JPME Phase II instruction.

Addition of the CGSC's SAMS SLC course to the list of senior level service schools will not otherwise affect the overall characterization of the CGSC, which will remain an intermediate level service school.

Budgetary Implications: Although Army projects that implementation of this proposal will cost $3,600 per year—all of which CGSC is prepared to absorb by realigning resources—Army will save approximately $136,000 per year (or over $680,000 over 5 years) in travel, lodging and per diem cost associated with sending the SAMS SLC attendees to the Joint Combined Warfighting Course in Norfolk, VA, to attain JPME phase II credentials. Total savings equal $132K: $136K (savings) minus $3.6K (costs).

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	-$.132	-$.132	-$.132	-$.132	-$.132	Operations and Maintenance,	3	323	0804751 A

						Army			
Total	-$.132	-$.132	-$.132	-$.132	-$.132	Operations and Maintenance, Army	3	323	0804751A

Changes to Existing Law: Section 522 would amend section 2151 of title 10, United States Code, as follows:

§ 2151. Definitions

(a) JOINT PROFESSIONAL MILITARY EDUCATION.—Joint professional military education consists of the rigorous and thorough instruction and examination of officers of the armed forces in an environment designed to promote a theoretical and practical in-depth understanding of joint matters and, specifically, of the subject matter covered. The subject matter to be covered by joint professional military education shall include at least the following:

(1) National Military Strategy.
(2) Joint planning at all levels of war.
(3) Joint doctrine.
(4) Joint command and control.
(5) Joint force and joint requirements development.
(6) Operational contract support.

(b) OTHER DEFINITIONS.—In this chapter:

(1) The term "senior level service school" means any of the following:
(A) The Army War College.
(B) The College of Naval Warfare.
(C) The Air War College.
(D) The Marine Corps War College.
(E) The senior-level course of the School of Advanced Military Studies of the United States Army Command and General Staff College.

(2) The term "intermediate level service school" means any of the following:
(A) The United States Army Command and General Staff College (other than with respect to the course specified in paragraph (1)(E)).
(B) The College of Naval Command and Staff.
(C) The Air Command and Staff College.
(D) The Marine Corps Command and Staff College.

Subtitle D—Administrative Procedure

Section 531 provides service members a clear roadmap to relief that they did not have before and codifies a longstanding principal of administrative law by requiring the exhaustion of administrative remedies prior to litigation. The proposed changes discussed in detail below work together to clarify the process for obtaining relief and to minimize unnecessary litigation.

Subsections (a), (b), and (c):

Subsection (a) of the proposal adds a new section 1560 to title 10, United States Code. The new section establishes procedures for judicial review of any records correction final decision made under sections 1034(f) or (g) and section 1552.

Subsection (b) of the new section 1560 raises the jurisprudential concept of nonjusticiability to the level of a jurisdictional bar. It is intended to preserve the current nonjusticiable status of certain issues that might come before an internal correction board, but are nonetheless precluded from judicial review. For example, courts have previously ruled that personnel assignment decisions are not justiciable and will not be reviewed by federal courts.

Subsection (c) of the new section 1560 specifically requires that a claimant use the remedies available through sections 1034 and 1552 before seeking judicial review under section 1560. The exhaustion requirement is satisfied only when the Secretary has reached and rendered a final decision. This requires any complaint raising issues, in whole or in part, which may be considered by the correction boards for full or partial relief be first submitted to the appropriate correction board. It specifically requires that claimants pursue the administrative remedies available through the correction board before seeking judicial review of an administrative personnel decision. This language is intended to satisfy the requirements of Darby v. Cisneros, 509 U.S. 137 (1993), which held that courts do not have authority to require administrative exhaustion as a prerequisite for judicial review under the Administrative Procedure Act unless specifically mandated by statute or agency rules. The exhaustion requirement here is satisfied only when the Secretary concerned has reached and rendered a final decision. Requiring a final decision and the exhaustion of administrative remedies is designed to facilitate the production of a decisional record adequate for meaningful judicial review.

Subsection (c)(3) of the new section1560 specifically exempts claimants, except for the named plaintiff, who are certified as class members in a class-action lawsuit from the requirement to exhaust their administrative remedies at a correction board before seeking judicial review.

The focus that this proposal places on the administrative process does not come at the price of reduced protections for military members or veterans. The statutory charter of the boards creates equitable bodies which are authorized to act when necessary to further the interests of justice. They are not limited, as is the judiciary, to simply ensuring compliance with the law. Moreover, as the boards are comprised of members of the executive department and act on behalf of the service secretaries, they are authorized and competent to address the substantive aspects of issues which are not justiciable. In the vast majority of cases, the probability that a claimant will obtain relief from an equitable board far exceeds the likelihood of a successful challenge in court. This bill does nothing to diminish the probability that an individual claimant

will obtain relief. It simply directs members and former members of the armed forces to the administrative forum, a correction board, that is better suited to resolve their grievance and clarifies the procedures for obtaining judicial review of any adverse administrative decisions. In so doing, it is fully consistent with the general trend towards alternative dispute resolution. It provides a clear roadmap for service members, so that they may fully be afforded the fullness of administrative and judicial review to best ensure their rights. There is currently much confusion about where a service member can seek such relief. They can go to a correction board, to a district court, or to the Court of Federal Claims. By requiring a service member to first seek relief at a correction board, it benefits the service member by providing a no-cost, non-adversarial forum that does not require an attorney. Additionally, this mandatory forum will create an administrative record that will assist a federal court if the service member subsequently seeks judicial review of the correction board decision.

Subsection (d) of the new section 1560 provides the statute of limitations for judicial review. This section grandfathers those individuals who received a final decision prior to the date of enactment. This is intended to generously protect the rights of service members who receive a final response prior to the enactment of the legislation. For final decisions made prior to the date of enactment, a claimant has the same period of time as exists under current law. For final decisions made on or after the date of enactment, the claimant has two years from the date of the final decision to file a petition for judicial review. The two year period of limitation, articulated in subsection (d)(1), was incorporated because it encourages timely challenges, thereby aiding in the accurate and just resolution of issues involving military records. Because the reviewing court would not be conducting a de novo trial, but instead would be reviewing an administrative record under the standard set out in subsection 1560(b), the two year period should provide the claimant ample time to assess the desirability of seeking judicial review and take the necessary steps to exercise that right. By way of reference, this period substantially exceeds the 60 days provided to civilian employees for judicial review under the Civil Service Reform Act, 5 U.S.C. § 7703(b)(1). It is also noteworthy that any claimant who is on active duty automatically has any statute of limitations tolled for the period of time they are on active duty under the Servicemembers Civil Relief Act, which has been applied by courts to correction board limitations.

In addition to the two year limit in subsection 1560(d)(1), subsection (d)(2) provides an additional limit on the judicial reviewability of correction board decisions where the correction board has waived its three-year statute of limitations set forth in section 1552(b) and where a court decision may result in the payment of money. Only denials of records correction final decisions that are received by the court within six years of the date of discharge, retirement, release from active duty, or death while on active duty of the person whose records are the subject of the records correction request are subject to judicial review for money claims. This preserves the rule in the U.S. Court of Federal Claims under which the 6-year limitations period for money claims begins on the date of discharge, retirement, or release from active duty. See Martinez v. United States, 333 F.3d 1295 (Fed. Cir. 2003) (en banc), cert. denied, 124 S. Ct.

1404 (2004). The statute of limitations for a correction board is three years from the discovery of the error or injustice. This statute of limitations can be excused by a correction board when it finds it to be in the interest of justice, and such limitation is routinely waived. See section 1552 (b). Subsection (d)(2) will allow for judicial review of money claims where the board has waived its statute of limitations but not more than six years from the date of discharge, retirement, release from active duty, or death while on active duty of the person whose records are the subject of the records correction request. The correction board is free to exercise its equitable powers to review even older cases, including money claims, but such decisions will not be subject to judicial review.

Subsection (e) of the new section 1560 limits the jurisdiction of courts to review any matter subject to a records correction under a provision of law specified in sections 1034(f) and (g) and section 1552.

Subsection (f) leaves intact the courts' existing jurisdiction over petitions for a writ of habeas corpus.

Subsection (b) of the proposal amends section 1034 of title 10 to require a "concise written statement of the basis" for any final decision by the Secretary of a military department or the Secretary of Homeland Security under section 1034(f) or the Secretary of Defense under section 1034(g) which does not grant the complete relief requested by the claimant. This provision also requires the Secretary concerned to accompany such decisions with notice of the availability of judicial review and the time period for obtaining such review. In addition, a new subsection, 1034(h), is added which precludes any judicial review of final decisions made under 1034(f) or (g) other than that which is provided for in section 1560. This subsection permits direct judicial review of final decisions of the Secretary of the military departments in cases where the petitioner does not apply for review by the Secretary of Defense.

Subsection (c) of the proposal adds a new subsection (h) to section 1552 of title 10 to require the Secretary concerned to provide the same concise rationale and explanation of the procedure for obtaining judicial review that is required under section 1034 for decisions which fail to grant complete relief. In both instances, this requirement was primarily designed to direct the production of a record of decision which could be subjected to a meaningful review in accordance with the provisions of section 1560. In addition, the requirement is an acknowledgment that applicants to the correction boards[1] would be well served by a meaningful explanation of an adverse ruling. Such explanations may actually serve to dispel the need for

[1] The term "correction boards" is used throughout this document to refer to the boards convened on behalf of the Secretaries of the military departments and the Secretary of Homeland Security pursuant to 10 U.S.C. § 1552.

some litigation by fostering a legitimate belief by the applicants that their claims have been heard, understood, and given due consideration.

However, most applicants to the correction boards are not contemplating litigation, but are simply seeking a fair and efficient resolution of their grievance. A lucid and succinct explanation often obtained from a correction board within six months is preferable to something akin to a judicial opinion requiring extensive preparation and time. In adopting the explanatory requirement, the intent is to minimize the burden on the correction boards, in the interests of efficiency, while enhancing the legitimacy of the correction boards and preserving the efficacy of judicial review. Accordingly, the language directing the correction boards to explain their decisions should not be construed as imposing any degree of formalism beyond the literal requirements.

In cases in which the administrative record has not been adequately developed or the record of decision is not sufficiently complete, it is anticipated that the reviewing court will remand the case to the correction board for further action in accordance with the court's instructions.

Finally, a new subsection (i) is added to section 1552 which precludes any judicial review of decisions made under section 1552 except as provided by section 1560.

Subsection (d):

Subsection (d) of the proposal makes the amendments made by this proposal effective one year after enactment. Its provisions are applicable to all final records correction decisions of the correction boards, whether they were rendered before or after the effective date. In other words, the proposal has retroactive effect on those decisions which have been rendered but for which judicial review has not been sought as of the effective date of the proposal. It was determined that the clarity that the proposal intended would be lost, if only temporarily, if we incorporated a complex implementation scheme. With regard to those cases decided before the effective date of the legislation which did not include a concise basis for the board's decision, it is intended that the reviewing courts would remand the cases back to the boards for further consideration in accordance with the provisions of this law.

Changes to Existing Law: Section 531 would make the following changes to title 10, United States Code:

§ 1560. Judicial review of decisions relating to correction of military records

[*The proposal would add a new section 1560. The text of the proposed new section appears in full in the legislative text above*.]

* * * * * * * * *

§ 1034. Protected communications; prohibition of retaliatory personnel actions

(a) RESTRICTING COMMUNICATIONS WITH MEMBERS OF CONGRESS AND INSPECTOR GENERAL PROHIBITED.— (1) No person may restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General.

(2) Paragraph (1) does not apply to a communication that is unlawful.

(b) PROHIBITION OF RETALIATORY PERSONNEL ACTIONS.— (1) No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing—

(A) a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted; or

(B) a communication that is described in subsection (c)(2) and that is made (or prepared to be made) to—

(i) a Member of Congress;

(ii) an Inspector General (as defined in subsection (i)) or any other Inspector General appointed under the Inspector General Act of 1978;

(iii) a member of a Department of Defense audit, inspection, investigation, or law enforcement organization;

(iv) any person or organization in the chain of command; or

(v) any other person or organization designated pursuant to regulations or other established administrative procedures for such communications.

(2) Any action prohibited by paragraph (1) (including the threat to take any unfavorable action and the withholding or threat to withhold any favorable action) shall be considered for the purposes of this section to be a personnel action prohibited by this subsection.

* * * * * * * * *

(f) CORRECTION OF RECORDS WHEN PROHIBITED ACTION TAKEN.—(1) A board for the correction of military records acting under section 1552 of this title, in resolving an application for the correction of records made by a member or former member of the armed forces who has alleged a personnel action prohibited by subsection (b), on the request of the member or former member or otherwise, may review the matter.

(2) In resolving an application described in paragraph (1), a correction board—

(A) shall review the report of the Inspector General submitted under subsection (e)(1);

(B) may request the Inspector General to gather further evidence; and

(C) may receive oral argument, examine and cross-examine witnesses, take depositions, and, if appropriate, conduct an evidentiary hearing.

(3) If the board elects to hold an administrative hearing, the member or former member who filed the application described in paragraph (1)—

(A) may be provided with representation by a judge advocate if—

(i) the Inspector General, in the report under subsection (e)(1), finds that there is probable cause to believe that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in subsection (c)(2);

(ii) the Judge Advocate General concerned determines that the case is unusually complex or otherwise requires judge advocate assistance to ensure proper presentation of the legal issues in the case; and

(iii) the member is not represented by outside counsel chosen by the member; and

(B) may examine witnesses through deposition, serve interrogatories, and request the production of evidence, including evidence contained in the investigatory record of the Inspector General but not included in the report submitted under subsection (e)(1).

(4) The Secretary concerned shall issue a final decision with respect to an application described in paragraph (1) within 180 days after the application is filed. If the Secretary fails to issue such a final decision within that time, the member or former member shall be deemed to have exhausted the member's or former member's administrative remedies under section 1552 of this title.

(5) The Secretary concerned shall order such action, consistent with the limitations contained in sections 1552 and 1553 of this title, as is necessary to correct the record of a personnel action prohibited by subsection (b).

(6) If the Board determines that a personnel action prohibited by subsection (b) has occurred, the Board may recommend to the Secretary concerned that the Secretary take appropriate disciplinary action against the individual who committed such personnel action.

(7) In any case in which the final decision of the Secretary concerned results in denial, in whole or in part, of any requested correction of the record of the member or former member, the Secretary concerned shall provide the member or former member a concise written statement of the basis for the decision and a notification of the availability of judicial review of the decision pursuant to section 1560 of this title and the time for obtaining such review.

(g) REVIEW BY SECRETARY OF DEFENSE.—(1) Upon the completion of all administrative review under subsection (f), the member or former member of the armed forces (except for a member or former member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) who made the allegation referred to in subsection (c)(1), if not satisfied with the disposition of the matter, may submit the matter to the Secretary of Defense. The Secretary shall make a decision to reverse or uphold the decision of the Secretary of the military department concerned in the matter within 90 days after receipt of such a submittal.

(2) The submittal of a matter to the Secretary of Defense by the member or former member under paragraph (1) must be made within 90 days of the receipt by the member or the former member of the final decision of the Secretary of the military department concerned in the matter. In any case in which the final decision of the Secretary of Defense results in denial, in whole or in part, of any requested correction of the member or former member, the Secretary of Defense

shall provide the member or former member a concise written statement of the basis for the decision and a notification of the availability of judicial review of the decision pursuant to section 1560 of this title and the time for obtaining such review.

(h) JUDICIAL REVIEW.—

(1) A decision of the Secretary of Defense under subsection (g) shall be subject to judicial review only as provided in section 1560 of this title.

(2) In a case in which review by the Secretary of Defense under subsection (g) was not sought, a decision of the Secretary of a military department under subsection (f) shall be subject to judicial review only as provided in section 1560 of this title.

(3) A decision by the Secretary of Homeland Security under subsection (f) shall be subject to judicial review only as provided in section 1560 of this title.

~~(h)~~(i) REGULATIONS.—The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

~~(i)~~(j) DEFINITIONS.—In this section:

(1) The term "Member of Congress" includes any Delegate or Resident Commissioner to Congress.

(2) The term "Inspector General" means any of the following:

(A) The Inspector General of the Department of Defense.

(B) The Inspector General of the Department of Homeland Security, in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(C) Any officer of the armed forces or employee of the Department of Defense who is assigned or detailed to serve as an Inspector General at any level in the Department of Defense.

(3) The term "unlawful discrimination" means discrimination on the basis of race, color, religion, sex, or national origin.

* * * * * * * * *

§ 1552. Correction of military records: claims incident thereto

(a)(1) The Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. Except as provided in paragraph (2), such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that military department. The Secretary of Homeland Security may in the same manner correct any military record of the Coast Guard.

(2) The Secretary concerned is not required to act through a board in the case of the correction of a military record announcing a decision that a person is not eligible to enlist (or reenlist) or is not accepted for enlistment (or reenlistment) or announcing the promotion and appointment of an enlisted member to an initial or higher grade or the decision not to promote an

enlisted member to a higher grade. Such a correction may be made only if the correction is favorable to the person concerned.

(3) Corrections under this section shall be made under procedures established by the Secretary concerned. In the case of the Secretary of a military department, those procedures must be approved by the Secretary of Defense.

(4) Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(b) No correction may be made under subsection (a)(1) unless the claimant or his heir or legal representative files a request for the correction within three years after he discovers the error or injustice. However, a board established under subsection (a)(1) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.

(c)(1) The Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, or on account of his or another's service as a civilian employee.

(2) If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for payment is made by a legal representative, the money shall be paid—

(A) to the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment;

(B) if there is no such law covering order of payment, in the order set forth in section 2771 of this title; or

(C) as otherwise prescribed by the law applicable to that kind of payment.

(3) A claimant's acceptance of a settlement under this section fully satisfies the claim concerned. This section does not authorize the payment of any claim compensated by private law before October 25, 1951.

(4) ***

(d) Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but for not longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate. Without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.

(e) No payment may be made under this section for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

(f) With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under subsection (a) may extend only to—

(1) correction of a record to reflect actions taken by reviewing authorities under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)); or

(2) action on the sentence of a court-martial for purposes of clemency.

(g) In this section, the term "military record" means a document or other record that pertains to (1) an individual member or former member of the armed forces, or (2) at the discretion of the Secretary of the military department concerned, any other military matter affecting a member or former member of the armed forces, an employee or former employee of that military department, or a dependent or current or former spouse of any such person. Such term does not include records pertaining to civilian employment matters (such as matters covered by title 5 and chapters 81, 83, 87, 108, 373, 605, 607, 643, and 873 of this title).

(h) In any case in which the final decision of the Secretary concerned results in denial, in whole or in part, of any requested correction, the Secretary concerned shall provide the claimant a concise written statement of the basis for the decision and a notification of the availability of judicial review of the decision pursuant to section 1560 of this title and the time for obtaining such review.

(i) A decision by the Secretary concerned under this section shall be subject to judicial review only as provided in section 1560 of this title.

Subtitle E—Decorations and Awards

Section 541 would remove the statutory provisions that limit the number of Medal of Honor sets that may be awarded, allowing a service member to receive a Medal of Honor for each subsequent valorous act that results in award of a Medal of Honor. The Department believes that if a Medal of Honor recipient performs a subsequent valorous act for which the member is awarded another Medal of Honor, the service member should be recognized with another Medal of Honor, not a "V" device attached to the previously awarded Medal of Honor. This initiative modifies 10 U.S.C., §6247 (Navy and Marine Corps), §3744, §8744 and 14 U.S.C. §494 (Coast Guard) to eliminate the limitation on the number of Medal of Honors that may be awarded.

This proposal is based on providing adequate recognition to a Service member who performs a valorous act worthy of the nation's most prestigious military decoration. If a Service member were to perform a subsequent valorous act that resulted in award of a subsequent Medal of Honor, the member should be recognized with another Medal of Honor, not with a "V" device on the previously awarded Medal of Honor.

Budget Implications: There would be no additional cost for this proposal.

NUMBER OF PERSONNEL AFFECTED:

Air Force	Navy	Marine Corps	Army
TBD	**TBD**	**TBD**	**TBD**

RESOURCE REQUIREMENTS($ MILLION):

Dollar amounts are in Millions						
Service	FY14	FY 15	FY16	FY17	FY18	Total
Air Force	$0	$0	$0	$0	$0	$0
Navy	$0	$0	$0	$0	$0	$0
Marine Corps	$0	$0	$0	$0	$0	$0
Army	$0	$0	$0	$0	$0	$0
Total	$0	$0	$0	$0	$0	$0

Changes to Existing Law: Section 541 would make the following changes to sections 3744, 6247 and 8744 of title 10, United States Code and section 494 of title 14, USC :

§ 3744. **Medal of Honor; Distinguished Service Cross; Distinguished Service Medal: limitations on award**

(a) No more than one ~~medal of honor~~, Distinguished Service Cross, or Distinguished Service Medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal or cross, the President may award a suitable bar or other device to be worn as he directs.

(b) Except as provided in subsection (d), no Medal of Honor, Distinguished Service Cross, Distinguished Service Medal, or device in place thereof, may be awarded to a person unless -

(1) the award is made within three years after the date of the act justifying the award;

(2) a statement setting forth the distinguished service and recommending official recognition of it was made within two years after the distinguished service; and

(3) it appears from records of the Department of the Army that the person is entitled to the award.

(c) No medal of honor, distinguished-service cross, distinguished-service medal, or device in place thereof, may be awarded or presented to a person whose service after he distinguished himself has not been honorable.

(d) If the Secretary of the Army determines that –

(1) a statement setting forth the distinguished service and recommending official recognition of it was made and supported by sufficient evidence within two years after the distinguished service; and

(2) no award was made, because the statement was lost or through inadvertence the recommendation was not acted on;

a medal of honor, distinguished-service cross, distinguished-service medal, or device in place thereof, as the case may be, may be awarded to the person concerned within two years after the date of that determination.

§ 6247. Additional awards

Not more than one ~~medal of honor~~, Navy Cross, Distinguished Service Medal, silver star medal, distinguished flying cross, or Navy and Marine Corps Medal may be awarded to a person. However, for each succeeding act or service that would otherwise justify the award of such a medal or cross, the President may award a suitable bar, emblem, or insignia to be worn with the decoration and corresponding rosette or other device.

§ 8744. Medal of Honor; Air Force Cross; Distinguished Service Medal: limitations on award

(a) No more than one ~~medal of honor~~, Air Force Cross, or Distinguished Service Medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal or cross, the President may award a suitable bar or other device to be worn as he directs.

(b) Except as provided in subsection (d), no Medal of Honor, Air Force Cross, Distinguished Service Medal, or device in place thereof, may be awarded to a person unless –

(1) the award is made within three years after the date of the act justifying the award;

(2) a statement setting forth the distinguished service and recommending official recognition of it was made within two years after the distinguished service; and

(3) it appears from records of the Department of the Air Force that the person is entitled to the award.

(c) No medal of honor, Air Force cross, distinguished-service medal, or device in place thereof, may be awarded or presented to a person whose service after he distinguished himself has not been honorable.

(d) If the Secretary of the Air Force determines that -

(1) a statement setting forth the distinguished service and recommending official recognition of it was made and supported by sufficient evidence within two years after the distinguished service; and

(2) no award was made, because the statement was lost or through inadvertence the recommendation was not acted on;

a medal of honor, Air Force cross, distinguished-service medal, or device in place thereof, as the case may be, may be awarded to the person concerned within two years after the date of that determination.

Title 14, United States Code

§ 494. Insignia for additional awards

No more than one ~~medal of honor,~~ Coast Guard cross, distinguished service medal, silver star medal, distinguished flying cross, or one Coast Guard medal shall be issued to any one person; but for each succeeding deed or service sufficient to justify the awarding of a ~~medal of honor,~~ Coast Guard cross, distinguished service medal, silver star medal, distinguished flying cross, or Coast Guard medal, the President may award a suitable emblem or insignia to be worn with the decoration and a corresponding rosette or other device.

Section 542 would modify the time limits contained in 10 U.S.C. 3744 and 8744, for nominating and awarding a soldier or airman a Medal of Honor, Service Cross (Distinguished Service Cross – Army; Air Force Cross – Air Force), or Distinguished-Service Medal so that time limits match those applicable to sailors and Marines under 10 U.S.C. 6248. It would provide soldiers and airmen with the same opportunity, from a time-limit standpoint, to be recommended for and awarded a Medal of Honor, Service Cross, or Distinguished-Service Medal as is provided to sailors and Marines.

This is a standardization initiative. Current law requires that Medal of Honor, Service Cross, and Distinguished-Service Medal recommendations for soldiers and airmen be submitted a full year earlier than recommendations are required to be submitted for sailors and Marines. The current statute also requires a Medal of Honor, Service Cross, or Distinguished-Service Medal for a soldier or airman be awarded 2-years earlier than a Medal of Honor, Navy Cross, or Distinguished-Service Medal must be awarded to a sailor or Marine. This initiative will ensure soldiers and airmen are provided the same opportunity to be recommended for and awarded these medals as is afforded to Marines and sailors. Standardizing the time limits will also eliminate confusion regarding awarding these decorations.

The initiative increases from 2-years to 3-years the time limit for recommending a soldier or airman for a Medal of Honor, Service Cross, or Distinguished-Service Medal. It increases from 3-years to 5-years the time limit for awarding a Medal of Honor, Service Cross, or Distinguished-Service Medal to a soldier or airman. The proposed change standardizes, across the Department of Defense (DoD), the statutory time limits for submitting nominations and awarding the Medal of Honor, Service Crosses, and Distinguished Service Medals.

The Department believes standardizing the statutory time limits on military decorations is in the best interest of DoD and the military departments. There is no compelling reason for different statutory time limits among the military departments. This initiative provides the Army

and the Air Force with an additional year to recommend service members for a Medal of Honor, Service Cross, or Distinguished Service Medal and an additional 2 years to award these decorations.

Budget Implications: There would be no additional cost for this proposal.

RESOURCE REQUIREMENTS ($MILLIONS)									
Service	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Air Force	$0	$0	$0	$0	$0				
Navy	$0	$0	$0	$0	$0				
Marine Corps	$0	$0	$0	$0	$0				
Army	$0	$0	$0	$0	$0				
Total	$0	$0	$0	$0	$0				

NUMBER OF PERSONNEL AFFECTED									
Service	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Air Force	TBD	TBD	TBD	TBD	TBD				
Navy	TBD	TBD	TBD	TBD	TBD				
Marine Corps	TBD	TBD	TBD	TBD	TBD				
Army	TBD	TBD	TBD	TBD	TBD				
Total	TBD	TBD	TBD	TBD	TBD				

Changes to Existing Law: Section 542 would make the following changes to sections 3744 and 8744 of title 10, United States Code:

§ 3744. Medal of honor; distinguished service cross; distinguished service medal: limitations on award

(a) No more than one medal of honor, distinguished service cross, or distinguished service medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal or cross, the President may award a suitable bar or other device to be worn as he directs.

(b) Except as provided in subsection (d), no medal of honor, distinguished service cross, distinguished service medal, or device in place thereof, may be awarded to a person unless -

(1) the award is made within ~~three~~ five years after the date of the act justifying the award;

(2) a statement setting forth the distinguished service and recommending official recognition of it was made within ~~two~~ three years after the distinguished service; and

(3) it appears from records of the Department of the Army that the person is entitled to the award.

* * * * * *

§ 8744. Medal of honor; Air Force cross; distinguished service medal: limitations on award

(a) No more than one medal of honor, Air Force cross, or distinguished service medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal or cross, the President may award a suitable bar or other device to be worn as he directs.

(b) Except as provided in subsection (d), no medal of honor, Air Force cross, distinguished service medal, or device in place thereof, may be awarded to a person unless –

(1) the award is made within ~~three~~ five years after the date of the act justifying the award;

(2) a statement setting forth the distinguished service and recommending official recognition of it was made within ~~two~~ three years after the distinguished service; and

(3) it appears from records of the Department of the Air Force that the person is entitled to the award.

* * * * * *

Section 543 eliminates the requirement for new Medal of Honor recipients to apply to be enrolled on the Medal of Honor Roll or elect to receive the special pension associated with enrollment authorized by 38 U.S.C., §1562. This moves the requirement for the Secretary of the Military Department concerned to maintain a Medal of Honor roll from title 38 U.S.C. to title 10 U.S.C., as this is an Armed Forces requirement, not a VA requirement (VA requirement is to pay the special pension).

This change enables automatic enrollment and payment of the special pension to living MOH recipients, unless the recipient specifically notifies the VA that he/she does not want to receive the special pension.

This change also ensures that each Military Department's Medal of Honor Roll also includes the names of members who were posthumously awarded the Medal of Honor, not just the names of living Medal of Honor recipients.

Budget Implications: There would be no additional cost for this proposal.

NUMBER OF PERSONNEL AFFECTED:

Air Force	Navy	Marine	Army

		Corps	
TBD	**TBD**	**1**	**2**

RESOURCE REQUIREMENTS($ MILLION):

Dollar amounts are in Millions						
Service	FY14	FY 15	FY16	FY17	FY18	Total
Air Force	$0	$0	$0	$0	$0	$0
Navy	$0	$0	$0	$0	$0	$0
Marine Corps	$0	$0	$0	$0	$0	$0
Army	$0	$0	$0	$0	$0	$0
Total	$0	$0	$0	$0	$0	$0

Changes to Existing Law: Section 543 would make the following changes to sections 1136 of title 10; and Section 1560, 1561, 1562 of title 38, United States Code:

§ Sec. 1136. **Medal of Honor Roll**
10 U.S.C. §1136 would be added as follows:

TITLE 10 - ARMED FORCES

Subtitle A - General Military Law
PART II – PERSONNEL
CHAPTER 57 - ***DECORATIONS*** *AND* ***AWARDS***
"§ 1136. Army, Navy, Air Force, and Coast Guard Medal of Honor Roll

"(a) ESTABLISHMENT.—There shall be in the Department of the Army, the Department of the Navy, the Department of the Air Force, and the Department of Homeland Security, respectively, a roll designated as the "Army, Navy, Air Force, and Coast Guard Medal of Honor Roll".

"(b) ENROLLMENT.—The Secretary concerned shall enter and record on such roll the name of each person who has served on active duty in the armed forces of the United States and who has been awarded a medal of honor pursuant to section 3741, 6241, or 8741 of this title or section 491 of title 14.

"(c) CERTIFICATE.—

"(1) IN GENERAL.—Each living person whose name is entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll shall be furnished a certificate of enrollment on such roll.

"(2) ENTITLEMENT TO SPECIAL PENSION.—The Secretary concerned shall deliver to the Secretary of Veterans Affairs a certified copy of each certificate of enrollment issued under paragraph (1). Such copy shall authorize the Secretary of Veterans Affairs to pay the special pension provided by section 1562 of title 38 to the person named in the certificate.".

38 U.S.C. §1562 would be modified as follows:

38 USC Sec. ***1562***

TITLE 38 - VETERANS' BENEFITS

PART II - GENERAL BENEFITS

CHAPTER 15 - PENSION FOR NON-SERVICE-CONNECTED DISABILITY OR DEATH OR FOR SERVICE

SUBCHAPTER IV - ARMY, NAVY, AIR FORCE, AND COAST GUARD MEDAL OF HONOR ROLL

Sec. 1562. Special provisions relating to pension

(a) The Secretary shall pay monthly to each *living* person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll, and a copy of whose certificate has been delivered to the Secretary under *subsection (c)(2) of section 1136 of title 10*~~of this title *10 U.S.C.*,~~ a special pension at the rate of $1,000, as adjusted from time to time under subsection (e), beginning as of the date ~~of~~ *such person's name is entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll under section 1136(b) of title 10 enrollment* ~~application therefor under section 1560 of this title~~.

(b) The receipt of special pension shall not deprive any person of any other pension or other benefit, right, or privilege to which such person is or may hereafter be entitled under any existing or subsequent law. Special pension shall be paid in addition to all other payments under laws of the United States.

(c) Special pension shall not be subject to any attachment, execution, levy, tax lien, or detention under any process whatever.

(d) If any person has been awarded more than one Medal of Honor, such person shall not receive more than one special pension.

(e) Effective as of December 1 each year, the Secretary shall increase the amount of monthly special pension payable under subsection (a) as of November 30 of such year by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1 of such year as a result of a determination under section 215(i) of that Act (42 U.S.C. 415(i)).

(f)(1) The Secretary shall pay, in a lump sum, to each person who is in receipt of special pension payable under this section an amount equal to the total amount of special pension that the person would have received during the period beginning on the first day of the first month beginning after the date of the act for which the person was awarded the Medal of Honor and ending on the last day of the month preceding the month in which the person's special pension in fact commenced.

(2) For each month of a period referred to in paragraph (1), the amount of special pension payable to a person shall be determined using the rate of special pension that was in effect for such month, and shall be payable only if the person would have been entitled to payment of special pension for such month under laws for eligibility for special pension (with the exception of the eligibility law requiring a person to have been awarded a Medal of Honor) in effect at the beginning of such month.*(g)(1) A person who is entitled to a special pension under subsection (a) may elect not to receive such special pension by notifying the Secretary of such election in writing.*
(2) The Secretary, upon verification of this election, shall cease payments of the special pension to such person.

38 U.S.C. §§ 1560,and 1561 would be deleted as provisions are incorporated into 10 U.S.C. §1136 proposed above

TITLE 38 - VETERANS' BENEFITS

PART II - GENERAL BENEFITS

CHAPTER 15 - PENSION FOR NON-SERVICE-CONNECTED DISABILITY OR DEATH OR FOR SERVICE

SUBCHAPTER IV - ARMY, NAVY, AIR FORCE, AND COAST GUARD MEDAL OF HONOR ROLL

~~Sec. 1560. Medal of Honor Roll; persons eligible~~

~~(a) There shall be in the Department of the Army, the Department of the Navy, the Department of the Air Force, and the Department of Homeland Security, respectively, a roll designated as the "Army, Navy, Air Force, and Coast Guard Medal of Honor Roll".~~

~~(b) Upon written application to the Secretary concerned, that Secretary shall enter and record on such roll the name of each surviving person who has served on active duty in the armed forces of the United States and who has been awarded a medal of honor for distinguishing such person~~

~~conspicuously by gallantry and intrepidity at the risk of such person's life above and beyond the call of duty while so serving.~~

~~(c) Applications for entry on such roll shall be made in the form and under regulations prescribed by the Secretary concerned, and shall indicate whether or not the applicant desires to receive the special pension provided by section 1562 of this title. Proper blanks and instructions shall be furnished by the Secretary concerned, without charge upon the request of any person claiming the benefits of this subchapter.~~

~~***38 USC*** Sec. ***1561***~~

~~HONOR ROLL~~

~~Sec. 1561. Certificate~~

~~(a) The Secretary concerned shall determine whether or not each applicant is entitled to have such person's name entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll. If the official award of the Medal of Honor to the applicant, or the official notice to such person thereof, shows that the Medal of Honor was awarded to the applicant for an act described in section 1560 of this title, such award or notice shall be sufficient to entitle the applicant to have such person's name entered on such roll without further investigation; otherwise all official correspondence, orders, reports, recommendations, requests, and other evidence on file in any public office or department shall be considered.~~

~~(b) Each person whose name is entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll shall be furnished a certificate of service and of the act of heroism, gallantry, bravery, or intrepidity for which the Medal of Honor was awarded, of enrollment on such roll, and, if such person has indicated such person's desire to receive the special pension provided by section 1562 of this title, of such person's right to such special pension.~~

~~(c) The Secretary concerned shall deliver to the Secretary a certified copy of each certificate issued under subsection (b) in which the right of the person named in the certificate to the special pension provided by section 1562 of this title is set forth. Such copy shall authorize the Secretary to pay such special pension to the person named in the certificate.~~

Subtitle F—Other Matters

Section 551 would authorize the Secretaries of the military departments to pay for expenses incident to death for certain decedents whose death is investigated by the Armed Forces Medical Examiner System (AFMES) under section 1471 of title 10, United States Code, when payment of such expenses is not otherwise authorized by law.

Currently, when the AFMES removes decedent remains to a Department of Defense (DOD) mortuary for a forensic pathology investigation pursuant to 10 U.S.C. 1471, some decedent's next of kin must pay for the mortuary services, including transportation costs, which may otherwise be available under section 1482 of title 10, at the conclusion of AFMES's investigation.

This proposal would amend sections 1481 and 1482 of title 10 to provide limited authority for the Secretaries of the military departments to pay expenses related to a decedent's remains held for investigation by the AFMES. The amendment to section 1481 would provide specific authority to provide for the care and disposition of remains, for those decedents not otherwise covered by section 1481, held by AFMES under section 1471. The amendments to section 1482 would provide authority to pay for expenses that would not have been incurred but for an AFMES forensic pathology investigation.

For example, if a decedent was only authorized limited mortuary services under section 1482(f), and partial remains have already been returned to the next of kin, the next of kin would not have incurred additional expenses to transport or inter the retained remains alongside the previously interred remains. In this scenario, this proposal would give the Secretary concerned additional authorization for transportation and interment at government expense of the remains held by the AFMES for forensic pathology investigation. Similarly, the proposal would authorize the Secretary concerned to transport remains of a decedent not otherwise covered by section 1481, like a contractor, whose remains were sent to AFMES for a forensic pathology investigation since the next of kin would not have incurred expenses associated with shipping a contractor's remains from Dover Mortuary to the place of interment or inurnment but for the AFMES investigation. The proposal would not give the Secretary concerned authority to pay for mortuary services for a contractor not associated with returning the remains since the next of kin would have incurred those expenses whether or not AFMES retained the remains.

Additionally, this proposal would authorize the Secretaries of the military departments to pay for the transportation and interment (or inurnment) in an appropriate place of a decedent's remains if the person authorized to direct disposition of remains does not offer such direction.

The importance of these amendments became apparent during the investigation concerning the handling of remains at Dover Air Force Base (AFB)'s Port Mortuary, where the Air Force was disposing of some remains from deceased Service members as medical waste. (See 42 U.S.C. 6992A) Such waste was further incinerated and disposed of as solid waste.

The investigation into Dover AFB's Port Mortuary's handling of servicemembers' remains recommended that the remains be returned to the person authorized to effect disposition of the remains. Because DoD lacks authority to pay the expenses related to disposing of certain

remains, currently DoD is forced to charge family members for reimbursable services provided. This places a hardship on the families and loved ones of the deceased.

AFMES currently has many retained organs with no authority to dispose of them without seeking reimbursement from the families of the deceased. Additionally, the proposal would allow DoD to provide other limited mortuary services, except an escort, for Department of Defense contractors and other individuals not otherwise entitled to mortuary services on a reimbursable basis.

The proposal also makes a clarifying amendment to authorize inurnment as a mortuary service since not all decedents are interred.

The proposal makes a technical amendment to section 1482(f) to recognize that expenses incurred for mortuary services are pursuant to the authority of the section, not the subsection.

Changes to Existing Law: Section 551 would make the following changes to sections 1481 and 1482, title 10, United States Code:

§ 1481. Recovery, care, and disposition of remains: decedents covered

(a) The Secretary concerned may provide for the recovery, care, and disposition of the remains of the following persons:

(1) Any Regular of an armed force under his jurisdiction who dies while on active duty.

(2) A member of a reserve component of an armed force who dies while—

(A) On active duty;

(B) Performing inactive-duty training;

(C) Performing authorized travel directly to or from active duty or inactive-duty training;

(D) remaining overnight immediately before the commencement of inactive-duty training, or remaining overnight, between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training;

(E) staying at the member's residence, when so authorized by proper authority, during a period of inactive duty training or between successive days of inactive duty training;

(F) hospitalized or undergoing treatment for an injury, illness, or disease incurred or aggravated while on active duty or performing inactive-duty training; or

(G) either—

(i) serving on funeral honors duty under section 12503 of this title or section 115 of title 32;

(ii) traveling directly to or from the place at which the member is to so serve; or

(iii) remaining overnight at or in the vicinity of that place before so serving, if the place is outside reasonable commuting distance from the member's residence.

[(3) Repealed.]

(4) Any member of, or applicant for membership in, a reserve officers' training corps who dies while (A) attending a training camp, (B) on an authorized practice cruise, (C) performing authorized travel to or from such a camp or cruise, or (D) hospitalized or undergoing treatment at the expense of the United States for injury incurred, or disease contracted, while attending such a camp, while on such a cruise, or while performing that travel.

(5) Any accepted applicant for enlistment in an armed force under his jurisdiction.

(6) Any person who has been discharged from an enlistment in an armed force under his jurisdiction while a patient in a United States hospital, and who continues to be such a patient until the date of his death.

(7) A person who—

(A) dies as a retired member of an armed force under the Secretary's jurisdiction during a continuous hospitalization of the member as a patient in a United States hospital that began while the member was on active duty for a period of more than 30 days; or

(B) is not covered by subparagraph (A) and, while in a retired status by reason of eligibility to retire under chapter 61 of this title, dies during a continuous hospitalization of the person that began while the person was on active duty as a Regular of an armed force under the Secretary's jurisdiction.

(8) Any military prisoner who dies while in his custody.

(9) To the extent authorized under section 1482(f) of this title, any retired member of an armed force who dies while outside the United States or any individual who dies outside the United States while a dependent of such a member.

(10) To the extent authorized under section 1482(g) of this title, any person not otherwise covered by the preceding paragraphs whose remains (or partial remains) have been retained by the Secretary concerned for purposes of a forensic pathology investigation by the Armed Forces Medical Examiner under section 1471 of this title.

(b) This section applies to each person covered by subsection (a)(1)-(7) even though he may have been temporarily absent from active duty, with or without leave, at the time of his death, unless he had been dropped from the rolls of his organization before his death.

(c) In this section, the term “dependent” has the meaning given such term in section 1072(2) of this title.

§ 1482. Expenses incident to death

(a) Incident to the recovery, care, and disposition of the remains of any decedent covered by section 1481 of this title, the Secretary concerned may pay the necessary expenses of the following:

(1) Recovery and identification of the remains.

(2) Notification to the next of kin or other appropriate person.

(3) Preparation of the remains for burial, including cremation if requested by the person designated to direct disposition of the remains.

(4) Furnishing of a uniform or other clothing.

(5) Furnishing of a casket or urn, or both, with outside box.

(6) Hearse service.

(7) Funeral director's services.

(8) Transportation of the remains, and roundtrip transportation and prescribed allowances for an escort of one person, to the place selected by the person designated to direct disposition of the remains or, if such a selection is not made, to a national or other cemetery which is selected by the Secretary and in which burial of the decedent is authorized. When transportation of the remains includes transportation by aircraft under section 562 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 10 U.S.C. 1482 note), the Secretary concerned shall provide, to the maximum extent practicable, for delivery of the remains by air to the commercial, general aviation, or military airport nearest to the place selected by the designee.

(9) Interment <u>or inurnment</u> of the remains.

(b) If an individual pays any expense payable by the United States under this section, the Secretary concerned shall reimburse him or his representative in an amount not larger than that normally incurred by the Secretary in furnishing the supply or service concerned. If reimbursement by the United States is also authorized under another provision of law or regulation, the individual may elect under which provision to be reimbursed.

(c) The following persons may be designated to direct disposition of the remains of a decedent covered by this chapter:

(1) The person identified by the decedent on the record of emergency data maintained by the Secretary concerned (DD Form 93 or any successor to that form), as the Person Authorized to Direct Disposition (PADD), regardless of the relationship of the designee to the decedent.

(2) The surviving spouse of the decedent.

(3) Blood relatives of the decedent.

(4) Adoptive relatives of the decedent.

(5) If no person covered by paragraphs (1) through (4) can be found, a person standing in loco parentis to the decedent.

(d) When the remains of a decedent covered by section 1481 of this title, whose death occurs after January 1, 1961, are determined to be nonrecoverable, the person who would have

been designated under subsection (c) to direct disposition of the remains if they had been recovered may be—

(1) presented with a flag of the United States; however, if the person designated by subsection (c) is other than a parent of the deceased member, a flag of equal size may also be presented to the parents, and

(2) reimbursed by the Secretary concerned for the necessary expenses of a memorial service.

However, the amount of the reimbursement shall be determined in the manner prescribed in subsection (b) for an interment, but may not be larger than that authorized when the United States provides the grave site. A claim for reimbursement under this subsection may be allowed only if it is presented within two years after the date of death or the date the person who would have been designated under subsection (c) to direct disposition of the remains, if they had been recovered, receives notification that the member has been reported or determined to be dead under authority of chapter 10 of title 37, whichever is later.

(e) PRESENTATION OF FLAG OF THE UNITED STATES.—(1) In the case of a decedent covered by section 1481 of this title, the Secretary concerned may pay the necessary expenses for the presentation of a flag of the United States to the following persons:

(A) The person designated under subsection (c) to direct disposition of the remains of the decedent.

(B) The parents or parent of the decedent, if the person to be presented a flag under subparagraph (A) is other than a parent of the decedent.

(C) The surviving spouse of the decedent (including a surviving spouse who remarries after the decedent's death), if the person to be presented a flag under subparagraph (A) is other than the surviving spouse.

(D) Each child of the decedent, regardless of whether the person to be presented a flag under subparagraph (A) is a child of the decedent.

(2) The Secretary concerned may pay the necessary expenses for the presentation of a flag to the person designated to direct the disposition of the remains of a member of the Reserve of an armed force under his jurisdiction who dies under honorable circumstances as determined by the Secretary and who is not covered by section 1481 of this title if, at the time of such member's death, he—

(A) was a member of the Ready Reserve; or

(B) had performed at least twenty years of service as computed under section 12732 of this title and was not entitled to retired pay under section 12731 of this title.

(3) A flag to be presented to a person under subparagraph (B), (C), or (D) of paragraph (1) shall be of equal size to the flag presented under subparagraph (A) of such paragraph to the person designated to direct disposition of the remains of the decedent.

(4) This subsection does not apply to a military prisoner who dies while in the custody of the Secretary concerned and while under a sentence that includes a discharge.

(5) In this subsection:

(A) The term "parent" includes a natural parent, a stepparent, a parent by adoption, or a person who for a period of not less than one year before the death of the decedent stood in loco parentis to the decedent. Preference under paragraph (1)(B) shall be given to the persons who exercised a parental relationship at the time of, or most nearly before, the death of the decedent.

(B) The term "child" has the meaning prescribed by section 1477(d) of this title.

(f) The payment of expenses incident to the recovery, care, and disposition of a decedent covered by section 1481(a)(9) of this title is limited to the payment of expenses described in paragraphs (1) through (5) of subsection (a) and air transportation of the remains from a location outside the United States to a point of entry in the United States. Such air transportation may be provided without reimbursement on a space-available basis in military or military-chartered aircraft. The Secretary concerned shall pay all other expenses authorized to be paid under this ~~sub~~section only on a reimbursable basis. Amounts reimbursed to the Secretary concerned under this subsection shall be credited to appropriations available, at the time of reimbursement, for the payment of such expenses.

(g)(1) The payment of expense incident to the recovery, care, and disposition of the remains of a decedent covered by section 1481(10) of this title is limited to those expense that, as determined under regulations prescribed by the Secretary of Defense, would not have been incurred but for the retention of those remains for purposes of a forensic pathology investigation by the Armed Forces Medical Examiner under section 1471 of this title. The Secretary concerned shall pay all other expenses authorized to be paid under this section only on a reimbursable basis. Amounts reimbursed to the Secretary concerned under this subsection shall be credited to appropriations available at the time of reimbursement for the payment of such expenses.

(2) In a case covered by paragraph (1), if the person designated under subsection (c) to direct disposition of the remains of a decedent does not direct disposition of the remains that were retained for the forensic pathology investigation, the Secretary may pay for the transportation of those remains to, and interment or inurnment of those remains in, an appropriate place selected by the Secretary, in lieu of the transportation authorized to be paid under paragraph (8) of subsection (a).

(3) In a case covered by paragraph (1), expenses that may be paid do not include expenses with respect to an escort under paragraph (8) of subsection (a), whether or not on a reimbursable basis.

Section 552 would expand privileged information status to survival, evasion, resistance, and escape debriefings of Covered Persons returned to United States control. Covered Persons include those who have not been determined to be in a missing status in accordance with Section 1502 title 10, United States Code. Covered Persons are often in a situation where they must survive on their own, evade capture, resist interrogation or exploitation, or escape captivity and

are returned to United States control before the process of determining "missing status" has begun or has been completed.

This proposal applies only to the survival, evasion, resistance, and escape debriefing of Covered Persons returned to United States control. Interview questions for the debriefing are developed in advance and tailored to the returned person's experiences. The interview is conducted in a controlled environment and its purpose is to allow the returned covered person to decompress and to assess the effectiveness of the Department's survival, evasion, resistance, and escape training in order to make necessary changes and improvements.

Decompression is the psychological process that allows an individual to begin normalizing physical and emotional reactions to their traumatic experience, an opportunity to predict and control their environment, and to repeatedly tell their story in a positive manner.

It is important for the Department to protect survival, evasion, resistance, and escape debriefings obtained from Covered Persons returned to United States control. Covered Persons endure extreme psychological hardship during their involuntary absence, and after their return to United States control they may be apprehensive about disclosing certain aspects of events that took place during their involuntary absence. Their apprehensions may be based on their belief that they did something wrong, illegal, or immoral. They may be ashamed or embarrassed about certain aspects of their involuntary absence. Treating these debriefings as privileged information will assure the Covered Person returned to United States control of the privacy of their debriefing and allow them to more fully and freely disclose information surrounding their involuntary absence.

Additionally, treating these debriefings as privileged information would obligate other organizations conducting investigations or collecting information, criminal or otherwise, to conduct independent interviews and debriefings.

In summary, this proposal would extend the protection of privileged information to survival, evasion, resistance, and escape debriefs of Covered Persons returned to United States control and facilitate the Department's ability to obtain the fullest possible disclosure of information. The proposal adds the definition of "survival, evasion, resistance, and escape debrief." The protection of survival, evasion, resistance, and escape debriefs as privileged information is important to assist the Department in collecting the fullest disclosure of information from Covered Persons returned to United States control. This disclosure will enable these returned Persons to decompress and the Department to assess, change, and improve survival, evasion, resistance, and escape training.

Changes to Existing Law: Section 552 would amend sections 1506 and 1513 of title 10, United States Code, as follows:

§ 1506. Personnel files

(a) INFORMATION IN FILES.— Except as provided in subsections (b), (c), and (d), the Secretary concerned shall, to the maximum extent practicable, ensure that the personnel file of a missing person contains all information in the possession of the United States relating to the disappearance and whereabouts and status of the person.

(b) CLASSIFIED INFORMATION.—(1) The Secretary concerned may withhold classified information from a personnel file under this section. If the Secretary concerned withholds classified information from a personnel file, the Secretary shall ensure that the file contains the following:

(A) A notice that the withheld information exists.

(B) A notice of the date of the most recent review of the classification of the withheld information.

(2)(A) If classified information withheld under this subsection refers to one or more unnamed missing persons, the Secretary shall ensure that notice of that withheld information, and notice of the date of the most recent review of the classification of that withheld information, is made reasonably accessible to the primary next of kin, members of the immediate family, and the previously designated person of all missing persons from the conflict or period of war to which the classified information pertains.

(B) For purposes of subparagraph (A), information shall be considered to be made reasonablyaccessible if placed in a separate and distinct file that is available for review by persons specified in subparagraph (A) upon the request of any such person either to review the separate file or to review the personnel file of the missing person concerned.

(c) PROTECTION OF PRIVACY.— The Secretary concerned shall maintain personnel files under this section, and shall permit disclosure of or access to such files, in accordance with the provisions of section 552a of title 5 and with other applicable laws and regulations pertaining to the privacy of the persons covered by the files.

(d) PRIVILEGED INFORMATION.—(1) The Secretary concerned shall withhold from personnel files under this section, as privileged information, debriefing reports provided by missing persons returned to United States control which are obtained under a promise of confidentiality made for the purpose of ensuring the fullest possible disclosure of information.

(2) <u>The Secretary concerned shall withhold from personnel files under this section, as privileged information, any survival, evasion, resistance and escape debriefing report provided by a person described in section 1501(c) of this title who is returned to United States control which is obtained under a promise of confidentiality made for the purpose of ensuring the fullest possible disclosure of information.</u>

(~~2~~3) If a debriefing report contains non-derogatory information about the status and whereabouts of a missing person other than the source of the debriefing report or about unnamed missing persons, the Secretary concerned shall prepare an extract of the non-derogatory information. That extract, following a review by the source of the debriefing report, shall be placed in the personnel file of each missing person named in the debriefing report in such a manner as to protect the identity of the source providing the information. Any information contained in the extract of the debriefing report that pertains to unnamed missing persons shall be made reasonably accessible to the primary next of kin, members of the immediate family, and the previously designated person.

(~~3~~4) Whenever the Secretary concerned withholds a debriefing report, or part of a debriefing report, from a personnel file under this subsection, the Secretary shall ensure that the file contains a notice that withheld information exists.

(e) AVAILABILITY OF INFORMATION.— The Secretary concerned shall, upon request, make available the contents of the personnel file of a missing person to the primary next of kin, the other members of the immediate family, or any other previously designated person of the person.

(f) NONDISCLOSURE OF CERTAIN INFORMATION.— A record of the content of a debriefing of a missing person returned to United States control during the period beginning on July 8, 1959, and ending on February 10, 1996, that was conducted by an official of the United States authorized to conduct the debriefing is privileged information and, notwithstanding sections 552 and 552a of title 5, may not be disclosed, in whole or in part, under either such section. However, this subsection does not limit the responsibility of the Secretary concerned under paragraphs (~~2~~3) and (~~3~~4) of subsection (d) to place extracts of non-derogatory information, or a notice of the existence of such information, in the personnel file of a missing person.

* * * * * *

§ 1513. Definitions

In this chapter:

(1) The term “missing person” means—

(A) a member of the armed forces on active duty who is in a missing status; or

(B) a civilian employee of the Department of Defense or an employee of a contractor of the Department of Defense who serves in direct support of, or accompanies, the armed forces in the field under orders and who is in a missing status. Such term includes an unaccounted for person described in subsection (a)

of section 1509 of this title who is required by subsection (b) of such section to be considered a missing person.

(2) The term “missing status” means the status of a missing person who is determined to be absent in a category of any of the following:

(A) Missing.

(B) Missing in action.

(C) Interned in a foreign country.

(D) Captured.

(E) Beleaguered.

(F) Besieged.

(G) Detained in a foreign country against that person’s will.

(3) The term “accounted for”, with respect to a person in a missing status, means that—

(A) the person is returned to United States control alive;

(B) the remains of the person are recovered and, if not identifiable through visual means as those of the missing person, are identified as those of the missing person by a practitioner of an appropriate forensic science; or

(C) credible evidence exists to support another determination of the person’s status.

(4) The term “primary next of kin”, in the case of a missing person, means the individual authorized to direct disposition of the remains of the person under section 1482 (c) of this title.

(5) The term “member of the immediate family”, in the case of a missing person, means the following:

(A) The spouse of the person.

(B) A natural child, adopted child, stepchild, or illegitimate child (if acknowledged by the person or parenthood has been established by a court of competent jurisdiction) of the person, except that if such child has not attained the age of 18 years, the term means a surviving parent or legal guardian of such child.

(C) A biological parent of the person, unless legal custody of the person by the parent has been previously terminated by reason of a court decree or otherwise under law and not restored.

(D) A brother or sister of the person, if such brother or sister has attained the age of 18 years.

(E) Any other blood relative or adoptive relative of the person, if such relative was given sole legal custody of the person by a court decree or otherwise under law before the person attained the age of 18 years and such custody was not subsequently terminated before that time.

(6) The term “previously designated person”, in the case of a missing person, means an individual designated by the person under section 655 of this title for purposes of this chapter.

(7) The term “classified information” means any information the unauthorized disclosure of which (as determined under applicable law and regulations) could reasonably be expected to damage the national security.

(8) The term “theater component commander” means, with respect to any of the combatant commands, an officer of any of the armed forces who

(A) is commander of all forces of that armed force assigned to that combatant command, and

(B) is directly subordinate to the commander of the combatant command.

(9) The term “survival, evasion, resistance, and escape debrief” means an interview conducted witha person described in section 1501(c) of this title who is returned to United States control in order to record the person’s experiences while surviving, evading, resisting interrogation or exploitation, or escaping.

Section 553 would prescribe in law as a responsibility of the Department of Defense activities to reach out regularly to families of those missing from past conflicts to provide them general and specific information about the Defense Department’s efforts to account for their loved ones.

Based in part on a recommendation from the 1991-1992 Senate Select Committee on POW/MIA Affairs, the Defense Prisoner of War/Missing Personnel Office (DPMO) leads the Department’s current outreach program to families of our missing Service members. Since 1995, representatives from DPMO, the Joint POW/MIA Accounting Command, the Armed Forces DNA Identification Laboratory, the Air Forces Life Sciences Equipment Laboratory, and the Military Services have met with more than 13,500 family members of missing Service members to provide them with information about the Department’s efforts to account for our missing. Currently, DPMO organizes approximately ten of these briefings per year throughout the United States; these briefings and meetings are recognized as important forums for both the families and the Department to communicate with one another with respect to the resolution of these missing persons cases.

The briefings implement a communications and outreach mission already delegated to DPMO by directive of the Secretary of Defense (paragraph 5.4.13. of DoD Directive 5110.10). However, although section 1501(b)(1)(B) of title 10, United States Code, provides that the Secretary shall establish uniform procedures for, *inter alia*, disseminating and updating information about missing persons, it does not specifically refer to the periodic briefings for

families now organized by DPMO. The proposed addition of new language to section 1501(a)(1) would confirm the statutory basis for this mission and ensure its continued implementation as an essential part of the overall accounting mission.

Budget Implications: None. The proposed addition to section 1501(a)(1) merely confirms the authority of the Department to conduct family outreach programs that already are supported with appropriated funds of the respective participating organizations.

Changes to Existing Law: Section 553 would amend section 1501 of title 10, United States Code, as follows:

§ 1501. System for accounting for missing persons

(a) RESPONSIBILITY FOR MISSING PERSONNEL.—(1) The Secretary of Defense shall designate within the Office of the Secretary of Defense an official as the Deputy Assistant Secretary of Defense for Prisoner of War/Missing Personnel Affairs to have responsibility for Department of Defense matters relating to missing persons. Subject to the authority, direction, and control of the Secretary of Defense, the responsibilities of the official designated under this paragraph shall include—

(A) policy, control, and oversight within the Department of Defense of the entire process for investigation and recovery related to missing persons (including matters related to search, rescue, escape, and evasion);

(B) policy, control, and oversight of the program established under section 1509 of this title, as well as the accounting for missing persons (including locating, recovering, and identifying missing persons or their remains after hostilities have ceased); ~~and~~

(C) coordination for the Department of Defense with other departments and agencies of the United States on all matters concerning missing persons~~.~~; and

(D) coordination of periodic briefing of families of missing persons about the efforts of the Department of Defense to account for those persons.

Section 554: The care and support of military families is a top national security policy priority. President Obama has made caring for military families a national priority, and has called to action his entire administration and communities across the U.S. on their behalf. "The strength and the readiness of America's military depend on the strength and readiness of our military families. This is a matter of national security. It's not just the right thing to do. It also makes this country strong. . . Behind every American in uniform stands a wife, a husband, a mom, a dad, a son or a daughter, a sister or brother. These families, these remarkable families, are the force behind the force. They, too, are the reason we've got the finest military in the

world."[2] Congress recognized this in the FY12 National Defense Authorization Act (NDAA), which, among other things, expanded membership on the Department of Defense (DoD) Military Family Readiness Council to include more family members and more reserve component members; required a report on the DoD autism pilot and demonstration projects; required a review of the DoD spouse employment programs; enhanced the Yellow Ribbon Reintegration Program to improve processes for determining best practices and to improve collaboration with State programs; authorized $40 million in supplemental impact aid to school districts serving large numbers of military children and $5 million to those school districts who support a large number of disabled military children; and provided a three-year extension for DoD to provide grants to local educational agencies serving military dependent students living in the U.S. who do not attend DoD schools. The Department of Defense recently issued DoD Instruction 1342.22, *Military Family Readiness*. The President, Congress, and the DoD explicitly acknowledge that there is an inseparable link between family resilience and unit readiness.

In 2010, Admiral Olson, then Commander, United States Special Operations Command (CDRUSSOCOM), established a task force to determine the impact of extended years of combat operations on the Special Operations Force (SOF). The Pressure on the Force and Families Task Force (POTFF TF) members met with all elements of the force and families from October 2010 through August 2011. They conducted interviews with members of 55 different SOF units, both CONUS and OCONUS, in garrison and deployed, that included 455 non-attribution focus groups composed of approximately 7,000 service members and more than 1,000 spouses. The POTFF TF found evidence and indicators of an increase in physical, mental and spiritual strain on SOF and their families. Upon taking command of USSOCOM, Admiral McRaven repurposed Task Force as the *Preservation* of the Force and Families Task Force and directed the POTFF TF to develop and implement solutions to ensure the long-term health and well-being of SOF and their families. Unlike other Combatant Commanders, CDRUSSOCOM has a responsibility for the readiness of its assigned forces, and where there are unmet needs that hinder the readiness of the force, the command must have the ability to use its fiscal resources to resolve those needs. USSOCOM believes that family stability is such a need. While the Services offer a host of excellent family support programs, there are aspects of SOF that necessitate innovations and the expansion of programs that are not common to the general purposes forces. The POTFF TF found that the exceedingly high operational tempo and sensitive mission set of SOF place a unique burden on the families of these service members, and require family support programs that are attuned to the cultural idiosyncrasies of the SOF community. Additionally, given the strong association between family satisfaction and military retention, it is imperative that SOF families receive a level of services that is commensurate with the strategic need to retain experienced SOF operators and enablers. As these needs are unique to the SOF community and

[2] President Barak Obama, 12 April 2011.

where they are not addressed by Service sponsored family support programs, the CDRUSSOCOM requires the legislative authority to apply special operations Operations and Maintenance (O&M) funds to initiate, augment or tailor family resiliency programs accordingly.

This proposal is not intended to supplant the Services' responsibility to provide for the welfare of military families; rather, it is intended to ensure that the CDRUSSOCOM has the authority and resources necessary to provide SOF forces and their families with access to family programs that meet their unique needs. Special operations forces and families will continue to take advantage of Service sponsored programs; however, when service gaps are identified, or innovations emerge, USSOCOM requires the ability to meet those needs and implement innovate programs rapidly and comprehensively.

Currently, many of the family programs sponsored by the Services are limited in scope, and are centric to the sponsoring Service. Despite a recent emphasis by the Services to bolster family support programs, we still find that there is limited access to some services and a dearth of programs that adequately account for the unique needs of the SOF community.

Under existing legislative authorities, the CDRUSSOCOM cannot supplement chaplain-led family programs to improve access within the SOF community, nor can he fund family support programs led by Department of Defense medical personnel and other professional staff. This proposed legislative change will enable the CDRUSSOCOM to use O&M funds to extend and tailor Service chaplain-led programs to better support the forces and families assigned to USSOCOM; to otherwise support family programs that have been identified as "best practices" by the USSOCOM component commands; and to implement innovative "pilot" programs identified by the POTFF that, in the due course of time, may be adopted by the Services for use across the military. Providing the CDRUSSOCOM with the authority to use O&M funds in support of SOF families is consistent with the commander's statutory responsibility to ensure the readiness of SOF forces.

There are several "pilot" initiatives that USSOCOM will undertake if given the authority to do so. USSOCOM will supplement current Service chaplain-led retreats funding to marital enhancement programs such as the Strong Bonds (Army), CREDO (MARSOC), the Air Force Chaplain-led retreat programs to the extent that the Services are unable to meet SOF requirements. Additionally, USSOCOM will work with the services to pilot innovative approaches, and otherwise tailor these programs to meet SOF-unique requirements.

The POTFF identified an unmet need for family programs oriented to children, especially teenage children, across the SOF enterprise. Repeatedly, in focus groups and personal interviews

service members and family member spouses have identified this gap in programs and described the deleterious effects of frequent deployments on the welfare of their children and the family. This dynamic has also been repeatedly cited in recent research.[3] USSOCOM would like to have the ability to augment camps and other youth oriented activities that are currently sponsored by non-profit organizations or other non-federal entities, or to otherwise provide similar programs where unmet needs exist. For example, the Naval Special Warfare (NSW) Command is taking advantage of summer camps for youth specifically designed for the children of SOF families. This program has been exceedingly popular and anecdotal evidence suggests that it is an effective means of helping children cope with the stressors associated with being in a SOF family. The summer camp program used by NSW is conducted by a non-profit organization whose mission is to support Navy SOF, and other non-federal entities, with limited logistic support provided by NSW (primarily in the form of chaplains and behavioral health professionals). This is the type of program that USSOCOM would like to build upon and expand across the SOF enterprise, with the support of other SOF-focused non-profit organizations, if and where available. It is also an innovation that, if all current indications of success are realized, could be a program that the Services may want to adopt across the military.

Other innovative programs identified by the POTFF that the CDRUSSOCOM would pilot, if this legislation is passed, include:

- A Spouse Mentorship Program. The POTFF identified a loss of spousal mentoring culture within the SOF community. The Senior Spouse Mentorship program is a spouse resiliency education program. Although this program could be chaplain-led, it is not currently offered by the Services, and it may be better led other experts in the field.

- Prepare/Enrich. Prepare/Enrich is an off-the-shelf, non-faith-based, customized couple assessment that identifies a couple's strength and growth areas. It is also used for marriage counseling, marriage enrichment, and dating couples considering engagement. Based on a couple's assessment results, a trained facilitator provides 4-8 feedback sessions in which the facilitator helps the couple

[3] Lincoln, A., Swift, E., & Shorteno-Fraser, M. (2008). Psychological adjustment and treatment of children and families with parents deployed in military combat. *Journal of Clinical Psychology, 64*, 984-992; American Psychological Association Task Force on Military Deployment Services for Youth, Families and Service Members (February 2007). *The psychological needs of US military service members and their families: A preliminary report.* Washington, DC: American Psychological Association.

discuss and understand their results as they are taught proven relationship skills. Prepare/Enrich was developed by a professor at the University of Minnesota and has documented results. It is not currently being used by all of the Services.

- Parent/Child Relationship/Reconnection Programs. These are parent/child programs that use adventure weekend settings to build parent/child relationships and foster post-deployment reconnections. Such programs are not currently offered by the Services.

- Third Location Decompression (TLD) for Spouses. TLD is a proven "best practice" for NSW and MARSOC service members. TLD involves the service members who are returning from deployment spending several days at a location other than their home station prior to reintegration with their families. Among other things, TLD involves mandatory interviews with a chaplain, a psychologist/psychiatrist, and physical health care provider. (In addition to the reintegration benefits, the mandatory requirement helps eliminate some of the stigma associated with seeking such help.) During the POTFF survey of the force, the spouses overwhelmingly requested a version of TLD for Spouses, during which they had similar opportunities to have one-on-one meetings with care providers prior to their spouses return to assist them in the reintegration process. Such a program is not currently offered by the Services.

The Services implement the authority currently found in §1789 differently. Unlike the other combatant commands, CDRUSSOCOM has the service-like responsibility for the readiness of the forces assigned to USSOCOM. As described above, it is the CDRUSSOCOM's intent to ensure that effective family programs are leveraged across the joint USSOCOM enterprise; thus, it is imperative that we are able to identify those family programs that warrant additional resources and command support. This is not an attempt to usurp the Services' responsibilities to their forces. This proposal will give the CDRUSSOCOM the authority to fill in any gaps left by the Service's programs.

If given the authority to pilot innovative programs such as those described above, USSOCOM will require that any program funded by the command has an accompanying program evaluation that uses the appropriate qualitative and quantities research techniques. Subject matter experts are working to identify reliable and valid measures to integrate into existing and planned family programs, so that these programs may be assessed empirically.

Budget Implications: This proposal would not require any additional appropriation of funds. Family Support Programs are fully funded within existing SOCOM resources.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
SOCOM	10.0	10.0	10.0	-	-	Operation & Maintenance, Defense-Wide	01	1PL2	
Total	10.0	10.0	10.0	-	-	Operation & Maintenance, Defense-Wide	01	1PL2	

Changes to Existing Law: Section 554 would not change the text of existing law.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A – Pay and Allowances

Section 601 would set the annual military basic pay increase for fiscal year (FY) 2014 at 1.0 percent and would become effective on January 1, 2014. Absent the proposed legislative change, section 1009 of title 37, United States Code, would automatically increase military basic pay by 1.8 percent on January 1, 2014, based upon the change in the Employment Cost Index (specifically, the sub-index titled "Private Industry, Wages and Salaries, 12-month percent change" for the period ending September 30, 2012). The Bureau of Labor Statistics maintains and publishes the Employment Cost Index monthly.

We are at a strategic turning point and the Defense budget is a reflection of the changes in defense strategy announced by the President. There were hard choices that had to be made in every budget category, *including military compensation.* Reductions in forces, training, and modernization alone will degrade our nation's military capabilities beyond an acceptable level of risk; therefore, it is necessary to slow the growth in military pay and benefits. However, a central principle remains that we must ensure the All-Volunteer Force remains the world's most ready, best trained, and strongest military in the world and that Service members and their families receive the finest quality care and support.

To ensure our ability to recruit and retain a quality All-Volunteer Force, and based on empirical data, an independent Presidential Commission (the 9th Quadrennial Review of Military Compensation) recommended Department of Defense (DoD) pay Service members equal to or better than 70 percent of their civilian counterparts. Today, when compared to civilians with equivalent education and work experience, enlisted compensation exceeds the 90th percentile of the civilian workforce wages, and officer compensation exceeds the 83rd percentile of their

civilian counterparts.

In terms of real earnings, the average junior enlisted member, typically with just a high school degree, earns approximately $45,000 per year compared to the median of $23,900 for 16-24 year olds reported by the Bureau of Labor Statistics. This measure does not include the many special pays, bonuses, free medical care and a government-paid retirement plan that members would typically receive.

Due to the forecast of economic conditions, the competitive salaries offered to Service members, and the high retention rates reflected within our force, DoD can recruit and retain the requisite force and continue to offer a competitive military pay and benefits package with a 1.0 percent basic pay raise. It is important to emphasize that even with a lower base pay raise, military compensation will still remain well above the 70th percentile, while achieving substantive savings.

A 1.0 percent raise helps DoD maintain the balance of competitive pay with our responsibility to be accountable for costs to the American taxpayers.

Budget Implications: Slowing the rate of growth of military pay and benefits by setting the FY 2014 pay raise at 1.0 percent will affect all 2.2 million Active, Reserve, and National Guard Service members. The projected savings by Component across the Future Years Defense Program from the lower 1.0 percent basic pay raise is detailed in the table below.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	-169	-225	-227	-230	-236	MPA	01, 02, 03		
Army Reserve	-20	-27	-28	-28	-29	RPA	01		
Army National Guard	-35	-47	-47	-47	-49	NGPA	01		
Navy	-108	-145	-146	-148	-152	MPN	01, 02, 03		
Navy Reserve	-8	-10	-10	-10	-11	RPN	01		
Marine Corps	-54	-72	-73	-74	-76	MPMC	01, 02		
Marine Corps Reserve	-3	-4	-4	-4	-4	RPMC	01		
Air Force	-117	-157	-158	-160	-164	MPAF	01, 02, 03		
Air Force Reserve	-7	-10	-10	-10	-10	RPAF	01		
Air National	-13	-18	-18	-18	-19	NGPAF	01		

Guard									
Total*	-536	-716	-722	-732	-750				

*Totals may not add due to rounding

Changes to Existing Laws: Section 601 would not amend existing law.

Section 602 would extend through December 2015 the authority for the Secretary of the Army to provide to students attending the Leaders Training Course with certain recruitment incentives not otherwise authorized by law. The authority to provide such incentives expires at the end of December 2012. Amending the current legislative language will provide the same incentives to students who attend the Leaders Training Course (LTC) through 2015.

This change would continue this important incentive program to meet the recruiting requirements of the force.

- Provides additional flexibility to meet the current and future commission mission and challenges and changes in the future recruiting environment.
- The cadets gained through LTC are particularly valuable because they have already established an academic track record and have lower attrition rates than cadets who start as college freshmen.
- LTC provides a means to recruit graduate students, thus enabling the Army to access lieutenants with master degrees.
- An accession gained through the use of the Army's Officer Accession Pilot Program (OAPP-A) is extremely cost-effective in comparison to an accession gained through a four-year scholarship.

US Army Cadet Command's (USACC) mission increased from 4,500 officers in Fiscal Year (FY) 2009 to 5,350 officers in FY 2011 – a 19 percent mission increase for both Active and Reserve components. This requires educational benefits to be increased to meet the increased mission.

The pilot program provides a $5,000 bonus to students who graduate from the LTC and contract as a Reserve Officers Training Corps (ROTC) cadet. This is intended to offset potential income lost by students who forego a summer job in order to attend LTC.

LTC is a requirement specified in section 2104 of title 10, United States Code, which states, "field training or a practice cruise of a duration which is prescribed by the Secretary concerned as a preliminary requirement for admission to the advanced course". Making LTC is the last opportunity for non-prior service applicants to earn credit for the ROTC basic course – the first two-years of ROTC.

The LTC is an essential part of recruiting and leader development in the Army ROTC program. In order to remain in line with current budget trends, Cadet Command has shifted its recruiting focus away from heavy investment in the High School market to a more focused effort recruiting on college campuses. This has resulted in a reduction of Army ROTC 4-year scholarship offers to high school students from 4,000 per year to approximately 2,000. The reduction of 4-year scholarship offers also reduces the competition for those quality high school students between the Army and the Navy and Air Force ROTC programs. But the change in recruiting focus creates an increased need to have incentives to recruit high quality students, who have demonstrated ability to excel in the college academic environment, to meet the needs of the Army.

To be eligible for the bonus, students must not have incurred a previous military service obligation, must have successfully completed LTC, and must sign a contract to become a MS III cadet, which obligates the cadet to accept an appointment as an Army Officer if an appointment is offered. Prospective ROTC cadets may attend and graduate from LTC without being obligated to the Army, allowing the student to gain familiarity with the Army before making a decision about contracting with ROTC. It also allows the Army to evaluate students' potential in a challenging environment before offering contracts. ROTC contracts gained through LTC are a significant value to the Army, as these cadets do not compete for four-year scholarships, have established themselves in school, and have a higher propensity to successfully earn a commission. In addition, it provides the opportunity for graduate students to enter ROTC. Therefore, it is important to incentivize those students who have graduated from LTC to contract into ROTC.

In 2010, 1,360 students graduated from LTC and 1,038 have contracted to-date. This is a 2 percent increase over the number of cadets who contracted after LTC in 2008, and it will be a 29 percent volume increase over the three year average between 2004 and 2007. While the number of contracted cadets has increased substantially, the percentage of LTC graduates who ultimately signed contracts remains fairly consistent -- about 76 percent for 2006-2010.

LTC Graduations and Contracts 2004-2010

Year	2004	2005	2006	2007	2008	2009	2010
Graduated	991	876	1101	1165	1369	1718	1360
Contracted	729	647	877	862	1040	1220	1038
Contracting Rate	74%	74%	80%	74%	76%	71%	76%

Budget Implications: This bonus would be funded within existing Military Personnel Army funds. The Army has estimated the cost of this proposal as follows:

		RESOURCE REQUIREMENTS (MILLIONS)							
	FY	**FY**	**FY**	**FY**	**FY**	**Appropriation**	**Budget**	**Program**	**Line**

	2014	2015	2016	2017	2018	From	Activity	Element	Item
Army	3.6	3.6	0	0	0	Military Personnel, Army	6	0904901A	6PA
Navy	0	0	0	0	0	N/A	N/A	N/A	N/A
Marine Corps	0	0	0	0	0	N/A	N/A	N/A	N/A
Air Force	0	0	0	0	0	N/A	N/A	N/A	N/A
Total	3.6	3.6	3.6	0	0				

	NUMBER OF PERSONNEL AFFECTED								
	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	Appropriation From	Budget Activity	Program Element	Line Item
Army	736	736	736	736	736	Military Personnel, Army	6	0904901A	6PA
Navy	0	0	0	0	0	N/A	N/A		N/A
Marine Corps	0	0	0	0	0	N/A	N/A		N/A
Air Force	0	0	0	0	0	N/A	N/A		N/A
Total	736	736	736	736	736				

Cost Methodology: The resource requirements would be funded within existing Military Personnel Army funds. The Army will continue to operate its Senior Reserve Officer Training Corps (SROTC) program using current program of record resources.

Year	2013	2014	2015
Projected Attendees	1500	1500	1500
Actual Attendees	1455	1455	1455
Graduated	1382	1382	1382
Contracted	1037	1037	1037
Projected to Receive bonus	736	736	736
Bonus Cost	$3,680,000	$3,680,000	$3,680,000
Average Contracting Rate	75%	75%	75%
Average Bonus Acceptance Rate	71%	71%	71%

Changes to Existing Law: Section 602 would make the following change to section 681 of the National Defense Authorization Act for Fiscal Year 2006:

SEC. 681. TEMPORARY ARMY AUTHORITY TO PROVIDE ADDITIONAL RECRUITMENT INCENTIVES.

(a) AUTHORITY TO DEVELOP AND PROVIDE RECRUITMENT INCENTIVES.—The Secretary of the Army may develop and provide incentives not otherwise authorized by law to encourage individuals to accept.

* * * * *

(i) DURATION OF AUTHORITY.—

(1) IN GENERAL.—The Secretary may not develop an incentive under this section, or first provide an incentive developed under this section to an individual, after December 31, ~~2012~~ 2015.

(2) CONTINUATION OF INCENTIVES.—Nothing in paragraph (1) shall be construed to prohibit or limit the continuing provision to an individual after the date specified in that paragraph of an incentive first provided the individual under this section before that date.

Subtitle B—Bonuses and Special and Incentive Pay

Subtitle C—Disability, Retired Pay, and Survivor Benefits

Section 621 This proposal would affect spouses and former spouses who are in receipt of a division of military retired pay under section 1408 of title 10, United States Code, and whose entitlement is reduced due to a retroactive change in the sponsor retiree's disposable retired pay. This situation occurs in certain circumstances as a result of the sponsor retiree changing from receipt of Concurrent Retirement and Disability Compensation (CRDP) to Combat-Related Special Compensation (CRSC). CRSC payments are specifically not considered retired pay under 10 U.S.C. § 1413a(g). Thus, CRSC is not divisible as property under section 1408. If a member elects to receive CRSC, this can result in a retroactive reduction in disposable retired pay. This, in turn, can reduce or eliminate a spouse's or former spouse's entitlement to a division of pay for the retroactive period, thereby creating an overpayment of the entitlement the spouse or former spouse has already received.

In order to not penalize either the spouse or former spouse, or cause the individual to petition for a waiver of the debt created in this situation, this proposal would direct that any payment of division of pay previously made to a former spouse will not be affected by any retroactive change in the member's disposable retired pay. Thus, if the member's disposable retired pay is adjusted retroactively, which is attributable to the member changing from CRDP to CRSC, payments of spouse or former spouse division of property entitlements under section

1408 that were made prior to the retroactive change would be considered proper and no overpayment would be established against the spouse or former spouse.

Changes to Existing Law: This proposal would amend section 1414(d) of title 10, United States Code, as follows:

§ 1414. Members eligible for retired pay who are also eligible for veteran's disability compensation for disabilities rated 50 percent or higher: concurrent payment of retired and veteran's disability compensation

(a) ***

* * * * * *

(d) COORDINATION WITH COMBAT-RELATED SPECIAL COMPENSATION PROGRAM.—

(1) ***

* * * * * * *

(3)(A) An election by a member to change from receipt of retired pay in accordance with this section to receipt of special compensation in accordance with section 1413a of this title pursuant to paragraph (2), shall not affect payments made before the date of such election to the member's spouse or former spouse pursuant to section 1408 of this title, of disposable retired pay that a court treated as property for the purpose of issuing a final decree of divorce, dissolution, annulment, or legal separation, including a court ordered, ratified, or approved property settlement incident to such decree.

(B) In this paragraph:

(i) The term 'court' has the meaning given such term in section 1408(a)(1) of this title.

(ii) The term 'disposable retired pay' has the meaning given such term in section 1408(a)(4) of this title.

(iii) The term 'final decree' has the meaning given such term in section 1408(a)(3) of this title.

(iv) The term 'member' has the meaning given such term in section 1408(a)(5) of this title.

(v) The term 'spouse or former spouse' has the meaning given such term in section 1408(a)(6) of this title.

Section 701 This section would make changes to TRICARE cost sharing requirements to address the explosion in health care costs and make the health benefit sustainable. The Defense Health Budget has grown from $15.4 billion in fiscal year (FY) 1996 to $51.4 billion in FY 2012. During this period, annual TRICARE Prime (Prime) enrollment fees for retirees under 65 remained the same as in 1995, $460 per year for a family until the recent modest increase to $520 in FY 2012. Prime co-pays have remained at $12 per visit and pharmacy co-pays remained constant since 2002 until recent modifications in FY 2012 and FY 2013. As a result, the Department pays a continually increasing percentage of its beneficiaries' health costs. In 1995, beneficiaries paid approximately 27 percent of their health care costs. In 2011, they paid only 11 percent. At the same time, non-military health benefits have trended in exactly the opposite direction. A federal employee's share of the Blue Cross/Blue Shield Standard health plan has grown from $2,810 in 1996 to $7,200 in 2012. It has been estimated that American employees generally pay about 40 percent of the total health care costs, both in premiums and co-pays. Furthermore, TRICARE has become a better health plan, enrollee satisfaction rising from 46% in 2001 to 65 percent in 2012. These factors have led to a "user" effect. In 2000, it is estimated that only 60 percent of those eligible retirees under age 65 used their military health benefit, instead relying on their current employer's benefit plan. Currently the estimate is 86 percent with projections that by 2017 it will rise to 90 percent. The result of all these factors has led to rapid increases in the military health care budget. Without adjustments to the cost sharing structure, the cost of the Military Health System will continue to crowd out more and more programs critical to the national defense.

Subsection (a) would make a series of revisions to Prime enrollment fees for retirees and their dependents. It would disallow enrollment fee increases for survivors of members who die while on active duty or military disability retirees and their families. It would state that the enrollment fee for an individual is one-half that for a family. It would phase in over a four-year period an enrollment fee based on a percentage of retired pay, subject to a minimum and maximum amount. The minimum amount would be the current law policy of the 2013 amount, updated annually by the cost of living adjustment (COLA) applicable to retired pay. The maximum amount would be phased in over the four year period and would be different for flag and general officer retirees and all others. The applicable percentage, minimum and maximum amounts for calendar years 2014 through 2017 for a family would be as provided in the following table.

	Percentage	Minimum Amount	Maximum Amount for Retired Grades O-7 through 0-10	Maximum Amount for all Others
2014	2.95	$548	$ 900	$ 750
2015	3.30	$558	$1,200	$ 900

2016	3.65	$569	$1,500	$1,050
2017	4.0	$581	$1,800	$1,200

After 2017, the percentage would remain 4.0 and the minimum and maximum amounts would be updated by the COLA.

Subsection (b) would establish an annual TRICARE Standard enrollment fee for most retirees and their families, which would also apply to the TRICARE Extra program. It would not apply to survivors of members who die while on active duty or military disability retirees and their families. The amounts of the enrollment fees for individuals and families would be:

FY 2014: $70/$140;
FY 2015: $85/$170;
FY 2016: $100/$200;
FY 2017: $115/$230;
FY 2018: $130/$250;
and after FY 2018, the amounts adjusted based on the COLA.

Subsection (b) would also increase the TRICARE Standard deductible from its current level of $150/$300 for an individual and family to:

FY 2014: $160/$320;
FY 2015: $200/$400;
FY 2016: $230/$460;
FY 2017: $260/$520;
FY 2018: $290/$580;
and after FY 2018, the amounts adjusted based on the COLA.

Subsection (b) would also index the catastrophic cap by the COLA. The catastrophic cap would not take enrollment fees into account. Finally, subsection (b) would exempt from all of these increased fees survivors of members who died while on active duty and disability retirees. They would not have an enrollment fee, nor a change in deductible or catastrophic cap amounts.

Subsection (c) would introduce an annual enrollment fee for new TRICARE for Life beneficiaries (i.e., those retirees and dependents who become Medicare-eligible after enactment). This fee would not be charged to a survivor of a member who died while on active duty or a disability retiree or dependent of such a person and grandfathers those beneficiaries already in the TFL program prior to enactment. This enrollment fee would also be based on a percentage of retired pay, phased in over four years, and subject to a maximum amount. The applicable percentage and maximum amounts for calendar years 2014 through 2017 for a family of 2 or more persons would be as provided in the following table.

	Percentage	Maximum Amount for Retired Grades O-7 through 0-10	Maximum Amount for all Others
2014	0.5	$200	$150
2015	1.0	$400	$300
2016	1.5	$600	$450
2017	2.0	$800	$600

After 2017, the percentage would remain 2.0 and the maximum amounts would be adjusted by the COLA. The enrollment fee percentage and maximum fee for an individual is one-half that for a family.

Subsection (d) would make a series of revisions to the TRICARE pharmacy benefits program. First, it would specify that non-formulary drugs are required to be generally available only through the TRICARE mail order pharmacy. Second, it would set per-prescription generally applicable copayments in 2014 through 2023, but would exempt from these copayments survivors member who died while on active duty and disability retirees and their family members. The copayment amounts would be as follows:

	Retail Generic	Retail Formulary	Mail Order Generic	Mail Order Formulary	Mail Order Non-formulary
2014	$5	$26	$0	$26	$51
2015	$6	$28	$0	$28	$54
2016	$7	$30	$0	$30	$58
2017	$8	$32	$0	$32	$62
2018	$9	$34	$9	$34	$66
2019	$10	$36	$10	$36	$70
2020	$11	$38	$11	$38	$75
2021	$12	$40	$12	$40	$80
2022	$13	$43	$13	$43	$85
2023	$14	$45	$14	$45	$90

After 2023, amounts would be adjusted based on changes in costs of pharmaceutical agents and prescription dispensing. Retail prescriptions would continue to be for a supply of up to 30 days, and mail order prescriptions for a supply of up to 90 days.

This subsection would also establish a new requirement that refills of non-generic prescription maintenance medications are generally provided through military treatment facility pharmacies or the national mail-order pharmacy program. The Secretary would determine the

maintenance medications and other circumstances to which this requirement applies, as well as appropriate exceptions to the requirement for reasonable time periods to ensure that beneficiaries receive needed maintenance medications from retail pharmacies while arrangements are made for receipt consistent with the general requirement. As a conforming amendment, this subsection would also repeal section 716 of the National Defense Authorization Act for Fiscal Year 2013, which called for a five-year pilot program of mail-order program refills for TRICARE for life beneficiaries.

Subsection (e) would make conforming amendments to realign the TRICARE health benefit year from a fiscal year to a calendar year basis. The cost sharing provisions described above would be on a calendar year basis. This subsection similarly aligns other cost annual fee calculations to a calendar year basis. These are TRICARE for active duty families and the Uniformed Services Family Health Plan. The Secretary would be authorized to make appropriate provision by regulation to transition TRICARE health plan benefit years from a fiscal-year basis to a calendar-year basis pursuant to the amendments made by this section.

The change to a calendar year basis for TRICARE health plans is appropriate for several reasons. First, the law now links some annual fees to the percentage by which military retired pay is increased. The military retiree cost-of-living adjustment (COLA) is calculated and promulgated on a calendar year basis. With retired pay increases based on changes in the Consumer Price Index (CPI), they are not determined until the final quarter of the calendar year after CPI figures have been released. These figures are not available in time to make corresponding fiscal year fee adjustments. The most appropriate alignment is to a calendar year basis for all annual fee issues, including deductibles and catastrophic caps. These amendments will also better align TRICARE with the plan years of most employer provided plans so beneficiaries (particularly retirees and their families) can compare and select from their health plan options during an open season period.

Subsection (f) would provide authority for the Secretary of Defense to adjust payments into the Medicare-Eligible Retiree Health Care Fund in the event that, subsequent to the annual contributions into the Fund, which occur October 1, the Secretary determines that a change in the determinations and certification of the normal cost accrual contribution amounts is appropriate because of a significant change in law or other circumstance. In such event, the Secretary of the Treasury would be required to make a refund, additional payment, or other appropriate adjustment to the amounts paid for that fiscal year. Similar transactions would occur with respect to the non-DoD uniformed services. This authority would permit an adjustment, for example, if Congress enacted a significant change after the beginning of a fiscal year.

Budget Implications: This section would reduce the requirements for the Military Health System's Unified Medical Budget by $875 million in FY 2014 and $9.1 billion for FY 2014 – FY 2018. Specifically, the proposals would reduce Defense Health Program requirements by $297 million for FY 2014 and by $4.5 billion for FY 2014 – FY 2018. Funding

requirements for the Military Departments' Medicare-Eligible Retiree Health Care Fund (MERHCF) Contribution accounts would be reduced by $578 million in FY 2014 and by $4.6 billion for FY 2014 – FY 2018. The proposals would result in mandatory savings of $0 million in FY 2014 but $1.0 billion for FY 2014 – FY 2018. The reduced discretionary contributions to the MERHCF would also result in reduced mandatory collections of the amounts listed above for the Department of Defense (DoD), which are non-scoreable costs; including the effects on the Coast Guard, Public Health Service, and National Oceanic and Atmospheric Administration, these amounts increase to $594 million in FY 2014 and $4.7 billion for FY 2014 – FY 2018. DoD estimates these savings and costs based on revising cost shares (deductibles, enrollment fees, pharmacy co-pays). These increases in cost shares would be ramped up over a period of four to five years with a mechanism for indexing those cost shares thereafter based on the growth in the annual retiree COLA. Estimates of the impacts of those revised cost shares include reductions in direct costs from the cost shares, reduced users and reduced utilization of health care services.

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Defense Health	-297	-700	-933	-1,175	-1,396	O&M, Defense Health Program	01	02
Army	-148	-235	-249	-263	-278	Medicare-Eligible Retiree Health Fund Contribution (MERHFC), Army	01/02	01
Navy	-97	-154	-164	-173	-184	MERHFC, Navy	01/02	01
Marine Corps	-55	-88	-93	-99	-104	MERHFC, Marine Corps	01/02	01
Air Force	-99	-156	-165	-174	-184	MERHFC, Air Force	01/02	01
Army Reserve	-44	-70	-74	-78	-83	MERHFC, Army Reserve	01	01

Navy Reserve	-13	-21	-22	-23	-24	MERHFC, Navy Reserve	01	01
Marine Corps Reserve	-8	-13	-14	-15	-16	MERHFC, Marine Corps Reserve	01	01
Air Force Reserve	-15	-23	-25	-26	-28	MERHFC, Air Force Reserve	01	01
Army National Guard	-76	-120	-126	-133	-141	MERHFC, NG Personnel, Army	01	01
Air National Guard	-23	-37	-38	-41	-43	MERHFC, NG Personnel, Air Force	01	01
Total	-875	-1,617	-1,903	-2,200	-2,481			

Changes to Existing Law: This section would make the following changes to chapters 55 and 56 of title 10, United States Code, and to the National Defense Authorization Act for Fiscal Year 1997:

TITLE 10, UNITED STATES CODE
CHAPTER 55, MEDICAL AND DENTAL CARE

§ 1074g. Pharmacy benefits program

(a) Pharmacy benefits.

* * * * *

(5) The pharmacy benefits program shall assure the availability to eligible covered beneficiaries of pharmaceutical agents not included on the uniform formulary. Such pharmaceutical agents shall be available through at least one of the means described in paragraph (2)(E) *the national mail order pharmacy program* under terms and conditions that may include cost sharing by the eligible covered beneficiary in addition to any such cost sharing applicable to agents on the uniform formulary *shall include cost sharing by the eligible covered beneficiary as specified in paragraph (6).*

(6)(A) In the case of any of the years 2014 through 2023, the cost sharing amounts referred to in paragraph (5) shall be determined in accordance with the following table:

or:	*The cost sharing amount for 30-day supply of a retail generic is:*	*The cost sharing amount for 30-day supply of a retail formulary is:*	*The cost sharing amount for a 90-day supply of a mail order generic is:*	*The cost sharing amount for a 90-day supply of a mail order formulary is:*	*The cost amount for a 90-day supply of a mail order non-formulary is:*
014	*$5*	*$26*	*$0*	*$26*	*$51*
015	*$6*	*$28*	*$0*	*$28*	*$54*
016	*$7*	*$30*	*$0*	*$30*	*$58*
017	*$8*	*$32*	*$0*	*$32*	*$62*
018	*$9*	*$34*	*$9*	*$34*	*$66*
019	*$10*	*$36*	*$10*	*$36*	*$70*
020	*$11*	*$38*	*$11*	*$38*	*$75*
021	*$12*	*$40*	*$12*	*$40*	*$80*
022	*$13*	*$43*	*$13*	*$43*	*$85*
023	*$14*	*$45*	*$14*	*$45*	*$90*

(B) For any year after 2023, the cost sharing amounts referred to in paragraph (5) shall be equal to the cost sharing amounts for the previous year, adjusted by an amount, if any, as determined by the Secretary to reflect changes in the costs of pharmaceutical agents and prescription dispensing, rounded to the nearest dollar.

(C) Notwithstanding subparagraphs (A) and (B), the cost-sharing amounts referred to in paragraph (5) for any year for a dependent of a member of the uniformed services who dies while on active duty, a member retired under chapter 61 of this title, or a dependent of such a member shall be equal to the cost sharing amounts, if any, for fiscal year 2013.

* * * * *

(i) Refills of Prescription Maintenance Medications Through the National Mail Order Pharmacy Program.—

(1) In general.—The pharmacy benefits program shall require eligible covered beneficiaries to refill non-generic prescription maintenance medications through military treatment facility pharmacies or the national mail-order pharmacy program.

(2) Medications covered.—

(A) Determination.—The Secretary shall determine the maintenance medications subject to the requirement under paragraph (1).

(B) Supply.—In carrying out the requirement under paragraph (1), the Secretary shall ensure that the medications subject to the requirement under paragraph (1) are—

(i) generally available to eligible covered beneficiaries through retail pharmacies only for an initial filing of a 30-day or less supply; and

(ii) any refills of such medications are obtained through a military treatment facility pharmacy or the national mail-order pharmacy program.

(C) Exemption.—The Secretary may exempt the following prescription maintenance medications from the requirements in subparagraph (B):

(i) Medications that are for acute care needs.

(ii) Such other medications as the Secretary determines appropriate.

* * * * *

§ 1079. Contracts for medical care for spouses and children: plans

(a) * * * * *

(b) Plans covered by subsection (a) shall include provisions for payment by the patient of the following amounts:

(1) ***

(2) Except as provided in clause (3), the first $150 each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of all subsequent charges for such care during a fiscal year. Notwithstanding the preceding sentence, in the case of a dependent of an enlisted member in a pay grade below E-5, the initial deductible each fiscal year under this paragraph shall be limited to $50.

(3) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $300 (or in the case of the family group of an enlisted member in a pay grade below E-5, the first $100) each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of the additional charges for such care during a fiscal year.

* * * * *

(5) An individual or family group of two or more persons covered by this section may not be required by reason of this subsection to pay a total of more than $1,000 for health care received during any fiscal year under a plan under subsection (a).

* * * * *

§ 1086. Contracts for health benefits for certain members, former members, and their dependents

* * * * *

(b) For persons covered by this section the plans contracted for under section 1079(a) of this title shall contain the following provisions for payment by the patient:

(1) Except as provided in clause (2), the first $ 150 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of all subsequent charges for such care during a fiscal year.

(2) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $ 300 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of the additional charges for such care during a fiscal year.

(3) 25 percent of the charges for inpatient care, except that in no case may the charges for inpatient care for a patient exceed $ 535 per day during the period beginning on April 1, 2006, and ending on September 30, 2011. The Secretary of Defense may exempt a patient from paying such charges if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

(4) A member or former member of a uniformed service covered by this section by reason of section 1074(b) of this title, or an individual or family group of two or more persons covered by this section, may not be required to pay a total of more than $ 3,000 for health care received during any fiscal year under a plan contracted for under section 1079(a) of this title.

(b) For a person covered by this section, any plan contracted for under section 1079(a) of this title shall contain the following provisions for payment by the patient:

(1) An annual enrollment fee. The amount of such annual enrollment fee for a year is—

(A) for 2014, $70 for an individual or $140 for a family group of two or more persons;

(B) for 2015, $85 for an individual or $170 for a family group of two or more persons;

(C) for 2016, $100 for an individual or $200 for a family group of two or more persons;

(D) for 2017, $115 for an individual or $230 for a family group of two or more persons;

(E) for 2018, $125 for an individual or $250 for a family group of two or more persons; and

(F) for any year after 2018, the amount of the applicable enrollment fee for the previous year increased by the percentage by which retired pay is increased under section 1401a of this title for such year.

(2) An annual deductible of the charges in a year for all types of care authorized by this section and received while in an outpatient status and 25 percent of all subsequent charges for such care during a year. The amount of such annual deductible for a year is—

(A) for 2014, $160 for an individual or $320 for a family group of two or more persons;

(B) for 2015, $200 for an individual or $400 for a family group of two or more persons;

(C) for 2016, $230 for an individual or $460 for a family group of two or more persons;

(D) for 2017, $260 for an individual or $520 for a family group for a family group of two or more persons;

(E) for 2018, $290 for an individual or $580 for a family group of two or more persons; and

(F) for any year after 2018, the amount of the applicable deductible for the previous year increased by the percentage by which retired pay is increased under section 1401a of this title for such year.

(3) 25 percent of the charges for inpatient care. The Secretary of Defense may exempt a patient from paying such charges if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

(4) A person covered by this section may not be required to pay a total in excess of a catastrophic cap, excluding the amount of any annual enrollment fee under paragraph (1), for health care received during any year under a plan contracted for under section 1079(a) of this title. The amount of such catastrophic cap for a year is—

(A) for 2013, $3,000; and

(B) for any year after 2013, the amount of the catastrophic cap for the previous year increased by the percentage by which retired pay is increased under section 1401a of this title for such year.

(5) Notwithstanding paragraphs (1), (2), and (4), for a dependent of a member of the uniformed services who dies while on active duty, a member retired under chapter 61 of this title, or a dependent of such a member—

(A) there is no annual enrollment fee;

(B) the annual deductible referred to in paragraph (2) for a year is $150 for an individual or $300 for a family group of two or more persons; and

(C) the catastrophic cap for a year is $3,000.

* * * * *

(d) * * *

* * * * *

(3) * * *

* * * * *

(D)(i) Beginning January 1, 2014, a person described in paragraph (2) (except as provided in clauses (vi) and (vii)), shall pay an annual enrollment fee as a condition of eligibility for health care benefits under this section. Such enrollment fee shall be an amount (rounded to the nearest dollar) equal to the applicable percentage (specified in clause (ii)) of the retired pay of the member or former member upon whom the covered beneficiary's eligibility is based, except that the amount of such enrollment fee shall not be in excess of the applicable maximum enrollment fee (specified in clause (iii)).

(ii) The applicable percentage of retired pay shall be determined in accordance with the following table:

For:	*The applicable percentage for a family group of two or more persons is:*	*The applicable percentage for an individual is:*
2014	*0.50%*	*0.25%*
2015	*1.00%*	*0.50%*
2016	*1.50%*	*0.75%*
2017 and after	*2.00%*	*1.00%*

(iii) For any year 2014 through 2017, the applicable maximum enrollment fees for a family group of two or more persons shall be determined in accordance with the following table:

For:	*The applicable maximum enrollment fee for a family group whose eligibility is based upon a member or former member of retired grade O-7 or above is:*	*The applicable maximum enrollment fee for a family group whose eligibility is based upon a member or former member of retired grade O-6 or below is:*
2014	*$200*	*$150*
2015	*$400*	*$300*
2016	*$600*	*$450*
2017	*$800*	*$600*

(iv) For any year after 2017, the applicable maximum enrollment fee shall be equal to the maximum enrollment fee for the previous year increased by the percentage by which retired pay is increased under section 1401a of this title for such year.

(v) The applicable maximum enrollment fee for an individual shall be one-half the corresponding maximum fee for a family group of two or more persons (as determined under clauses (iii) and (iv)).

(vi) Clause (i) shall not apply to a dependent of a member of the uniformed services who dies while on active duty, a member retired under chapter 61 of this title, or a dependent of such a member.

(vii) Clause (i) also shall not apply to a person who, prior to the date of enactment of the National Defense Authorization Act for Fiscal Year 2014, met the conditions described in paragraph (2)(A) and (B).

* * * * *

§ 1097. Contracts for medical care for retirees, dependents, and survivors: alternative delivery of health care

* * * * *

(e) Charges for health care.

(1) The Secretary of Defense may prescribe by regulation a premium, deductible, copayment, or other charge for health care provided under this section. In the case of contracts for health care services under this section or health care plans offered under section 1099 of this title for which the Secretary permits covered beneficiaries who are covered by section 1086 of this title and who participate in such contracts or plans to pay an enrollment fee in lieu of meeting the applicable deductible amount specified in section 1086(b) of this title, the Secretary may establish the same (or a lower) enrollment fee for covered beneficiaries described in section 1086(d)(1) of this title who also participate in such contracts or plans. Without imposing additional costs on covered beneficiaries who participate in contracts for health care services under this section or health care plans offered under section 1099 of this title, the Secretary shall permit such covered beneficiaries to pay, on a quarterly basis, any enrollment fee required for such participation. Except as provided by paragraph (2), a premium, deductible, copayment, or other charge prescribed by the Secretary under this subsection may not be increased during the period beginning on April 1, 2006, and ending on September 30, 2011.

(2) Beginning October 1, 2012, the Secretary of Defense may only increase in any year the annual enrollment fees described in paragraph (1) by an amount equal to the percentage by which retired pay in increased under section 1401a of this title.

(f) Enrollment Fees.—

(1) Amount.—Beginning January 1, 2014, the enrollment fee described in subsection (e) for a covered beneficiary shall be an amount (rounded to the nearest dollar) equal to the applicable percentage (specified in paragraph (2)) of the retired pay of the member or former member upon whom the covered beneficiary's eligibility is based, except that the amount of such enrollment fee shall not be in excess of the applicable maximum enrollment fee nor less than the applicable minimum enrollment fee specified in paragraph (3).

(2) percentage of retired pay.—The applicable percentage of retired pay shall be determined in accordance with the following table:

For:	*The applicable percentage for a family*	*The applicable percentage for an*

	group of two or more persons is:	*individual is:*
2014	*2.95%*	*1.475%*
2015	*3.30%*	*1.650%*
2016	*3.65%*	*1.825%*
2017 and after	*4.00%*	*2.000%*

(3) Maximum and minimum enrollment fees.—

(A) Before 2018.—

(i) Family groups.—For the years 2014 through 2017, the applicable maximum and minimum enrollment fees for a family group of two or more persons shall be determined in accordance with the following table:

For	*The applicable minimum enrollment fee is:*	*The applicable maximum enrollment fee for a family group whose eligibility is based upon a member or former member of retired grade O-7 or above is:*	*The applicable maximum enrollment fee for a family group whose eligibility is based upon a member or former member of retired grade O-6 or below is:*
2014	*$548*	*$900*	*$750*
2015	*$558*	*$1,200*	*$900*
2016	*$569*	*$1,500*	*$1,050*
2017	*$581*	*$1,800*	*$1,200*

(ii) Individuals.—The applicable maximum and minimum enrollment fees for an individual shall be one-half the corresponding maximum and minimum enrollment fees for a family group of two or more persons (as specified in clause (i)).

(B) After 2017.—For any year after 2017, the applicable maximum and minimum enrollment fees shall be equal to the maximum and minimum enrollment fees for the previous year increased by the percentage by which retired pay is increased under section 1401a of this title for such calendar year.

(4) Exclusion.—Notwithstanding paragraph (1), the enrollment fee described in subsection (e) for a dependent of a member of the uniformed services who dies while on active duty, a member retired under chapter 61 of this title, or for a dependent of such a member shall not exceed the amount of any such enrollment fee for 2013.

* * * * *

CHAPTER 56, DEPARTMENT OF DEFENSE MEDICARE-ELIGIBLE RETIREE HEALTH CARE FUND

§ 1116. Payments into the Fund

* * * * *

(e)(1) During any fiscal year, if the Secretary of Defense determines that the amount certified under subsection (c) is no longer accurate because of a significant change in circumstances or law, the Secretary of Defense may, if appropriate, certify a revised amount determined in accordance with subsection (b)(2) to the Secretary of the Treasury.

(2) If the Secretary of Defense makes a certification under paragraph (1), each other administering Secretary shall make and advise the Secretary of the Treasury of a revised determination, consistent with section 1111(c) of this title.

(3) If a certification and determination are made under paragraphs (1) and (2), the Secretary of the Treasury shall promptly pay into or recoup from the Fund the difference between the amount paid into the Fund under subsection (a) and the amount certified or determined by the administering Secretary under paragraph (1) or (2).

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2013

SEC. 716. PILOT PROGRAM FOR REFILLS OF MAINTENANCE MEDICATIONS FOR TRICARE FOR LIFE BENEFICIARIES THROUGH THE TRICARE MAIL-ORDER PHARMACY PROGRAM.

(a) In General—The Secretary of Defense shall conduct a pilot program to refill prescription maintenance medications for each TRICARE for Life beneficiary through the national mail-order pharmacy program under section 1074g(a)(2)(E)(iii) of title 10, United States Code.

(b) Medications Covered—

(1) Determination—The Secretary shall determine the prescription maintenance medications included in the pilot program under subsection (a).

(2) Supply—In carrying out the pilot program under subsection (a), the Secretary shall ensure that the medications included in the program are generally available to a TRICARE for Life beneficiary—

(A) for an initial filling of a 30-day or less supply through—

(i) retail pharmacies under clause (ii) of section 1074g(a)(2)(E) of title 10, United States Code; and

(ii) facilities of the uniformed services under clause (i) of such section; and

(B) for a refill of such medications through—

(i) the national mail-order pharmacy program; and

(ii) such facilities of the uniformed services.

(3) Exemption—The Secretary may exempt the following prescription maintenance medications from the requirements in paragraph (2):

(A) Such medications that are for acute care needs.

(B) Such other medications as the Secretary determines appropriate.

(c) Nonparticipation—

(1) Opt out—The Secretary shall give TRICARE for Life beneficiaries who have been covered by the pilot program under subsection (a) for a period of one year an opportunity to opt out of continuing to participate in the program.

(2) Waiver—The Secretary may waive the requirement of a TRICARE for Life beneficiary to participate in the pilot program under subsection (a) if the Secretary determines, on an individual basis, that such waiver is appropriate.

(d) Regulations—The Secretary shall prescribe regulations to carry out the pilot program under subsection (a), including regulations with respect to—

(1) the prescription maintenance medications included in the pilot program pursuant to subsection (b)(1); and

(2) addressing instances where a TRICARE for Life beneficiary covered by the pilot program attempts to refill such medications at a retail pharmacy rather than through the national mail-order pharmacy program or a facility of the uniformed services.

(e) Reports- Not later than March 31 of each year beginning in 2014 and ending in 2018, the Secretary shall submit to the congressional defense committees a report on the pilot program under subsection (a), including the effects of offering incentives for the use of mail order pharmacies by TRICARE beneficiaries and the effect on retail pharmacies.

(f) Sunset—The Secretary may not carry out the pilot program under subsection (a) after December 31, 2017.

(g) TRICARE for Life Beneficiary Defined- In this section, the term `TRICARE for Life beneficiary' means a TRICARE beneficiary enrolled in the Medicare wraparound coverage option of the TRICARE program made available to the beneficiary by reason of section 1086(d) of title 10, United States Code.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1997

SEC. 724. ENROLLMENT OF COVERED BENEFICIARIES.

(a) Fiscal Year 1997 Limitation.—(1) *** * ***

(2) The Secretary may waive the limitation under paragraph (1) if the Secretary determines that additional enrollment authority for a designated provider is required to accommodate covered beneficiaries who are dependents of members of the uniformed services entitled to health care.

(b) Permanent Limitation.—For each fiscal year beginning after September 30, 1997, the *The* number of enrollees in managed care plans offered by designated providers *during any year* may not exceed 110 percent of the number of such enrollees as of the first day of the immediately preceding fiscal year. The Secretary may waive this limitation as provided in subsection (a)(2).

(c) ***

(d) Additional Enrollment Authority.--(1) Subject to paragraph (2), other covered beneficiaries may also receive health care services from a designated provider.

(2)(A) ***

*** * * * ***

(B) For each fiscal year beginning after September 30, 1997, the *The* number of covered beneficiaries newly enrolled by designated providers pursuant to clause (ii) of subparagraph (A) during such fiscal *any* year may not exceed 10 percent of the total number of the covered beneficiaries who are newly enrolled under such subparagraph during such fiscal year.

* * * * *

Section 702 would require physicians and suppliers who annually enroll as participating providers with Medicare to accept the TRICARE participating provider rate when treating TRICARE patients. Currently, as a condition for participating in the Medicare program and receiving Medicare reimbursement, hospitals must agree to be a participating provider under the TRICARE and Department of Veterans Affairs (VA) programs, and comply with TRICARE (or VA) regulatory requirements concerning admission practices and payment methodology. This section would place an analogous requirement on individual providers.

This section would increase access to care for TRICARE Standard patients, as well as for TRICARE Prime patients in geographic areas where network access to certain specialties has not been achievable. This improved access would improve health outcomes and customer service and satisfaction.

Changes to Existing Law: Section 702 would make the following changes to Section 1842(h)(1) of the Social Security Act (42 U.S.C; 1395u(h)(1)):

(h) Participating physician or supplier; agreement with Secretary; publication of directories; availability; inclusion of program in explanation of benefits; payment of claims on assignment-related basis

(1) Any physician or supplier may voluntarily enter into an agreement with the Secretary to become a participating physician or supplier. For purposes of this section, the term "participating physician or supplier" means a physician or supplier (excluding any provider of services) who, before the beginning of any year beginning with 1984, enters into an agreement with the Secretary which provides that such physician or supplier will accept payment under this part on an assignment-related basis for all items and services furnished to individuals enrolled under this part during such year. In the case of a newly licensed physician or a physician who begins a practice in a new area, or in the case of a new supplier who begins a new business, or in such similar cases as the Secretary may specify, such physician or supplier may enter into such an agreement after the beginning of a year, for items and services furnished during the remainder of the year. Any physician or supplier who voluntarily enters into an agreement with the Secretary to become a participating physician or supplier shall be deemed to have agreed to be a participating provider of medical care or services under any health plan contracted for under section 1079 or 1086 of title 10, United States Code, or under section 1781 of title 38, United States Code, in accordance with the payment methodology and amounts prescribed under joint regulations prescribed by the Secretary, the Secretary of Defense and the Secretary of Homeland Security pursuant to sections 1079 and 1086 of title 10, United States Code.

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

Section 801 would define the term “supplies” for purposes of the rapid acquisition and deployment procedures authorized by section of section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C. 2302 note). The definition is to avoid confusion regarding the context of this term and other definitions for this term in law or regulation, such as appears in 10 USC 101(a)(14) and sec. 108, Title 41 USC.

Also, providing a definition for “supplies,” as is already done in the legislation for the term “associated services,” will more clearly represent the intended scope of the legislation. Dr Ash Carter, the Deputy Secretary of Defense, has emphasized the importance of establishing policy, responsibilities and procedures for supporting urgent Combatant Commander needs as the Department transitions responsibilities in OEF and begins to focus on broader national security priorities. Ensuring that the legislation clearly documents the breadth and scope of its intended purpose and will ensure that it is an effective tool for meeting future urgent Combatant Commander requirements and will reduce or eliminate any friction resulting from conflicting interpretations. As the intent of the legislation is to expedite procurement action when casualties have or may occur, any effort to ensure its clarity would assist in preventing any delays or misunderstandings.

The definition for “supplies” used here is consistent with the definition provided in the Federal Acquisition Regulation (FAR 2.101) for “supplies.” This definition is sufficiently broad

for the types of supplies that are procured by the Department of Defense under the rapid acquisition authority of section 806.

Changes to Existing Law: Section 801 would make the following changes to section 806(g) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C. 2302 note):

SEC. 806.RAPID ACQUISITION AND DEPLOYMENT PROCEDURES.

(a) REQUIREMENT TO ESTABLISH PROCEDURES.—Not later than 180 days after the date of the enactment of this Act [Dec. 2, 2002], the Secretary of Defense shall prescribe procedures for the rapid acquisition and deployment of supplies and associated support services that are—

(1)(A) currently under development by the Department of Defense or available from the commercial sector; or

(B) require only minor modifications to supplies described in subparagraph (A); and

(2) urgently needed to react to an enemy threat or to respond to significant and urgent safety situations.

(b) ISSUES TO BE ADDRESSED.—The procedures prescribed under subsection (a) shall include the following:

(1) A process for streamlined communications between the Chairman of the Joint Chiefs of Staff, the acquisition community, and the research and development community, including—

(A) a process for the commanders of the combatant commands and the Joint Chiefs of Staff to communicate their needs to the acquisition community and the research and development community; and

(B) a process for the acquisition community and the research and development community to propose supplies and associated support services that meet the needs communicated by the combatant commands and the Joint Chiefs of Staff.

(2) Procedures for demonstrating, rapidly acquiring, and deploying supplies and associated support services proposed pursuant to paragraph (1)(B), including—

(A) a process for demonstrating performance and evaluating for current operational purposes the existing capability of the supplies and associated support services;

(B) a process for developing an acquisition and funding strategy for the deployment of the supplies and associated support services; and

(C) a process for making deployment and utilization determinations based on information obtained pursuant to subparagraphs (A) and (B).

(c) RESPONSE TO COMBAT EMERGENCIES.—(1) In the case of any supplies and associated support services that, as determined in writing by the Secretary of Defense without delegation, are urgently needed to eliminate a deficiency that has resulted in combat casualties, or is likely to result in combat casualties, the Secretary shall use the procedures developed under this section in order to accomplish the rapid acquisition and deployment of the needed supplies and associated support services.

(2)(A) Whenever the Secretary makes a determination under paragraph (1) that certain supplies and associated support services are urgently needed to eliminate a deficiency that has resulted in combat casualties, or is likely to result in combat casualties, the Secretary shall designate a senior official of the Department of Defense to ensure that the needed supplies and associated support services are acquired and deployed as quickly as possible, with a goal of awarding a contract for the acquisition of the supplies and associated support services within 15 days.

(B) Upon designation of a senior official under subparagraph (A), the Secretary shall authorize that official to waive any provision of law, policy, directive, or regulation described in subsection (d) that such official determines in writing would unnecessarily impede the rapid acquisition and deployment of the needed supplies and associated support services. In a case in which the needed supplies and associated support services cannot be acquired without an extensive delay, the senior official shall require that an interim solution be implemented and deployed using the procedures developed under this section to minimize the deficiency and combat casualties.

(3) In any fiscal year in which the Secretary makes a determination described in paragraph (1), the Secretary may use any funds available to the Department of Defense for that fiscal year for acquisitions of supplies and associated support services under this section if the determination includes a written finding that the use of such funds is necessary to address the combat capability deficiency in a timely manner. The authority of this section may not be used to acquire supplies and associated support services in an amount aggregating more than $200,000,000 during any such fiscal year.

(4) The Secretary of Defense shall, in consultation with the Director of the Office of Management and Budget, notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] within 15 days after each determination made under paragraph (1). For each such determination, the notice under the preceding sentence shall identify—

(A) the supplies and associated support services to be acquired;

(B) the amount anticipated to be expended for the acquisition; and

(C) the source of funds for the acquisition.

(5) Any acquisition initiated under this subsection shall transition to the normal acquisition system not later than two years after the date on which the Secretary makes the determination described in paragraph (1) with respect to the supplies and associated support services concerned.

(d) WAIVER OF CERTAIN STATUTES AND REGULATIONS.—(1) Upon a determination described in subsection (c)(1), the senior official designated in accordance with subsection (c)(2) with respect to that designation is authorized to waive any provision of law, policy, directive or regulation addressing—

(A) the establishment of the requirement for the supplies and associated support services;

(B) the research, development, test, and evaluation of the supplies and associated support services; or

(C) the solicitation and selection of sources, and the award of the contract, for procurement of the supplies and associated support services.

(2) Nothing in this subsection authorizes the waiver of—

(A) the requirements of this section or the regulations implementing this section; or

(B) any provision of law imposing civil or criminal penalties.

(e) TESTING REQUIREMENT.—(1) The process for demonstrating performance and evaluating for current operational purposes the existing capability of the supplies and associated support services prescribed under subsection (b)(2)(A) shall include—

(A) an operational assessment in accordance with procedures prescribed by the Director of Operational Test and Evaluation; and

(B) a requirement to provide information about any deficiency of the supplies and associated support services in meeting the original requirements for the supplies and associated support services (as stated in a statement of the urgent operational need or similar document) to the deployment decisionmaking authority.

(2) The process may not include a requirement for any deficiency of supplies and associated support services to be the determining factor in deciding whether to deploy the supplies and associated support services.

(3) If supplies and associated support services are deployed under the rapid acquisition and deployment procedures prescribed pursuant to this section, or under any other authority, before the completion of operational test and evaluation of the supplies and associated support services, the Director of Operational Test and Evaluation shall have access to operational records and data relevant to such supplies and associated support services in accordance with section 139(e)(3) of title 10, United States Code, for the purpose of completing operational test and evaluation of the supplies and associated support services. The access to the operational records and data shall be provided in a time and manner determined by the Secretary of Defense consistent with requirements of operational security and other relevant operational requirements.

(f) LIMITATION.—In the case of supplies that are part of a major system for which a low-rate initial production quantity determination has been made pursuant to section 2400 of title 10, United States Code, the quantity of such supplies acquired using the procedures prescribed pursuant to this section may not exceed an amount consistent with complying with limitations on the quantity of articles approved for low-rate initial production for such system. Any such

supplies shall be included in any relevant calculation of quantities for low-rate initial production for the system concerned.

(g) DEFINITIONS.—In this section:

(1) ASSOCIATED SUPPORT SERVICES ~~DEFINED~~ ~~—In this section, the~~ The term "associated support services" means training, operation, maintenance, and support services needed in connection with the deployment of supplies to be acquired pursuant to the authority of this section. The term does not include functions that are inherently governmental or otherwise exempted from private sector performance.

(2) SUPPLIES.—The term "supplies'' means all property except land or interest in land.

Section 802 This proposal would add a new chapter 164 to title 10, United States Code, to establish an effective program fraud civil remedy that may be used by the Department of Defense (DoD) or the National Aeronautics and Space Agency (NASA) to redress fraud in DoD and NASA procurement programs and acquisitions. This administrative remedy is a non-judicial remedy that would permit DoD and NASA (subject to DoJ approval) to impose penalties and assessments on contractors which make false claims and statements to DoD and NASA. The proposal creates a remedy for DoD and NASA to use in lieu of the existing Program Fraud Civil Remedies Act (chapter 38 of title 31, United States Code). DoD has rarely used the existing legal authority because it imposes requirements DoD cannot readily meet (for example, the need for administrative law judges to resolve factual disputes – DoD does not have ready access to administrative law judges and would need to acquire services from another agency on a reimbursable basis), and the procedures are cumbersome to the point of making it impractical for DoD or the military departments to pursue a remedy under title 31.

This legislative proposal streamlines and simplifies the cumbersome, multi-tiered approach set forth in title 31, while preserving its standards of review and providing contractors with due process and judicial review. The proposal would vest DoD, military department, and NASA suspending and debarring officials with the authority to impose administrative assessments and penalties similar to those permitted under title 31. DoD, military department, and NASA suspending and debarring officials execute the authorities at Federal Acquisition Regulation Subpart 9.4 (48 C.F.R. Subpart 9.4), and Defense Federal Acquisition Regulation Supplement Subpart 209.4 (48 C.F.R. Subpart 209.4). They serve in a quasi-judicial capacity, with responsibility for taking administrative action to suspend or debar a contractor when necessary to protect the government's interest. Contractors that are suspended or debarred are rendered ineligible to compete for or receive federal contracts or subcontracts, generally for a term of three years.

The proposed legislation eliminates many of the procedural requirements that impede DoD and NASA's use of the authority at title 31, including the exclusive use of administrative law judges to resolve factual disputes, without requiring additional resources to use the authority at title 31. The streamlined procedures set forth in the proposal afford contractors with adequate due process by establishing a legal process and related protections similar to those granted in agency suspensions and debarments, including review under the Administrative Procedures Act (Chapter 7 of Title 5, United States Code). The proposal imposes a $500,000 ceiling on false claims, singularly or combined, that can be pursued against a contractor using this administrative remedy, although, as with the authority at title 31, the assessment imposed may be doubled (for a maximum assessment of $1,000,000). As with the authority at title 31, the proposal authorizes the imposition of penalties of $5000 for each false claim or false statement, and there is no limit on the total number of penalties that can be imposed.

Although suspending and debarring officials would be vested with the authority to impose administrative assessments and penalties similar to those permitted under title 31, the important distinction between penalties to punish misconduct and suspension and debarment as a tool to protect the government from harm would be preserved. For example, the remedies coordination official, required by DoD Instruction 7050.05, will continue to make decisions regarding which remedies to pursue in a given case.

There is a substantial need for this fraud-fighting authority. Currently, the Department of Justice is unable to pursue many relatively low-dollar DoD and NASA-related fraud cases due to limited resources. This leaves a gap in remedial coverage, allowing contractors that engage in relatively low dollar fraud to escape civil remedies that otherwise would have given the United States Government the opportunity to recover damages and impose penalties for the contractors' misconduct. Of equal importance, as discussed above, the proposed legislation creates an administrative fraud remedy that can be readily used by DoD and NASA – a critical feature, considering that DoD is the largest purchaser of products and services in the United States Government. Additionally, the proposed legislation will create a fraud-fighting administrative remedy that could serve as a model that could assist the broader U.S. Government in determining whether this simplified and streamlined program fraud civil remedy is appropriate for use by all federal agencies.

Further, the 2010 Report to Congress by the DOD Panel on Contracting Integrity recommended this change to amend the Program Fraud Civil Remedies Act of 1986. This Panel 2010 action was supported by the Panel senior leaders from the military departments and Defense Agency representatives.

Budget Implications: This proposal creates a procurement fraud remedy that will produce a positive return to the United States Treasury, and would not require new resources to implement, as described below. The authority created by the proposal can be administered with the existing workforce in the DoD agencies and military departments, using the existing suspending and

debarring officials and their respective staffs. It is critical to note that the authority established under the proposed legislation is discretionary; it does not mandate that defense agencies or the military departments pursue every possible action. Rather, as with the current suspension and debarment process, which is also a discretionary process, DoD and military department officials must exercise discretion in pursuing recoveries under the proposed legislation. As with the current suspension and debarment process, that exercise of discretion will have to factor a host of considerations, including the severity of the alleged misconduct, the strength of the evidence, the appropriateness of the remedy, and whether the suspending and debarring official has sufficient resources – including staff – to pursue the administrative remedy. As a final consideration, much of the effort necessary to pursue a suspension or debarment is the same effort required to build a case under the proposed program. By working these matters concurrently, there should be limited additional work imposed on suspending and debarring officials and their staffs.

Changes to Existing Law: Section 802 would add a new chapter 164 to title 10, United States Code. The new chapter is set out in the legislative text of the proposal, above.

The proposal would amend 31 U.S.C. 3801 as follows: (For the information of reviewers, the entire text of chapter 38 of title 31 United States Code, is set forth):

CHAPTER 38— ADMINISTRATIVE REMEDIES FOR FALSE CLAIMS AND STATEMENTS

§ 3801. Definitions

(a) For purposes of this chapter--

(1) "authority" means--

(A) an executive department (other than the Department of Defense);
~~(B) a military department;~~
(~~C~~B) an establishment (as such term is defined in section 11(2) of the Inspector General Act of 1978) which is not an executive department (other than the National Aeronautics and Space Administration);
(~~D~~C) the United States Postal Service;
(~~E~~D) the National Science Foundation; and
(~~F~~E) a designated Federal entity (as such term is defined under section 8G(a)(2) of the Inspector General Act of 1978);

(2) "authority head" means--
(A) the head of an authority; or
(B) an official or employee of the authority designated, in regulations promulgated by the head of the authority to act on behalf of the head of the authority;

(3) “claim” means any request, demand, or submission--

(A) made to an authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(B) made to a recipient of property, services, or money from an authority or to a party to a contract with an authority--

(i) for property or services if the United States--

(I) provided such property or services;

(II) provided any portion of the funds for the purchase of such property or services; or

(III) will reimburse such recipient or party for the purchase of such property or services; or

(ii) for the payment of money (including money representing grants, loans, insurance, or benefits) if the United States--

(I) provided any portion of the money requested or demanded; or

(II) will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(C) made to an authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1986;

(4) “investigating official” means an individual who--

(A)(i) in the case of an authority in which an Office of Inspector General is established by the Inspector General Act of 1978 or by any other Federal law, is the Inspector General of that authority or an officer or employee of such Office designated by the Inspector General;

(ii) in the case of an authority in which an Office of Inspector General is not established by the Inspector General Act of 1978 or by any other Federal law, is an officer or employee of the authority designated by the authority head to conduct investigations under section 3803(a)(1) of this title; or

(iii) in the case of a military department, is the Inspector General of the Department of Defense or an officer or employee of the Office of Inspector General of the Department of Defense who is designated by the Inspector General; and

(B) who, if a member of the Armed Forces of the United States on active duty, is serving in grade O-7 or above or, if a civilian employee, is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule;

(5) “knows or has reason to know” for purposes of establishing liability under section 3802,

means that a person, with respect to a claim or statement--

(A) has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(B) acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(C) acts in reckless disregard of the truth or falsity of the claim or statement,

and no proof of specific intent to defraud is required;

(5) “person” means any individual, partnership, corporation, association, or private organization;

(7) “presiding officer” means--

(A) in the case of an authority to which the provisions of subchapter II of chapter 5 of title 5 apply, an administrative law judge appointed in the authority pursuant to section 3105 of such title or detailed to the authority pursuant to section 3344 of such title; or

(B) in the case of an authority to which the provisions of such subchapter do not apply, an officer or employee of the authority who--

(i) is selected under chapter 33 of title 5 pursuant to the competitive examination process applicable to administrative law judges;

(ii) is appointed by the authority head to conduct hearings under section 3803 of this title;

(iii) is assigned to cases in rotation so far as practicable;

(iv) may not perform duties inconsistent with the duties and responsibilities of a presiding officer;

(v) is entitled to pay prescribed by the Office of Personnel Management independently of ratings and recommendations made by the authority and in accordance with chapter 51 of such title and subchapter III of chapter 53 of such title;

(vi) is not subject to performance appraisal pursuant to chapter 43 of such title; and

(vii) may be removed, suspended, furloughed, or reduced in grade or pay only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing by such Board;

(8) “reviewing official” means any officer or employee of an authority—
(A) who is the designated by the authority head to make the determination required under section 3803(a)(2) of this title;

(B) who, if a member of the Armed Forces of the United States on active duty, is serving in grade O-7 or above or, if a civilian employee, is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule; and

(C) who is--

(i) not subject to supervision by, or required to report to, the investigating official; and

(ii) not employed in the organizational unit of the authority in which the investigating official is employed; and

(9) “statement” means any representation, certification, affirmation, document, record, or an accounting or bookkeeping entry made--

(A) with respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(B) with respect to (including relating to eligibility for)--

(i) a contract with, or a bid or proposal for a contract with an authority; or

(ii) a grant, loan, or benefit from an authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit,

except that such term does not include any statement made in any return of tax imposed by the Internal Revenue Code of 1986.

(b) For purposes of paragraph (3) of subsection (a)--

(1) each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim;

(2) each claim for property, services, or money is subject to this chapter regardless of whether such property, services, or money is actually delivered or paid; and

(3) a claim shall be considered made, presented, or submitted to an authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity including any State or political subdivision thereof acting for or on behalf of such authority, recipient, or party.

(c) For purposes of paragraph (9) of subsection (a)--

(1) each written representation, certification, or affirmation constitutes a separate statement; and

(2) a statement shall be considered made, presented, or submitted to an authority when such statement is actually made to an agent, fiscal intermediary, or other entity including any State or political subdivision thereof acting for or on behalf of such authority.

§ 3802. False claims and statements; liability

(a)(1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know--

(A) is false, fictitious, or fraudulent;

(B) includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(C) includes or is supported by any written statement that--

(i) omits a material fact;

(ii) is false, fictitious, or fraudulent as a result of such omission; and

(iii) is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or

(D) is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such claim. Except as provided in paragraph (3) of this subsection, such person shall also be subject to an assessment, in lieu of damages sustained by the United States because of such claim, of not more than twice the amount of such claim, or the portion of such claim, which is determined under this chapter to be in violation of the preceding

sentence.

(2) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that--

(A) the person knows or has reason to know--

(i) asserts a material fact which is false, fictitious, or fraudulent; or

(ii)(I) omits a material fact; and

(II) is false, fictitious, or fraudulent as a result of such omission;

(B) in the case of a statement described in clause (ii) of subparagraph (A), is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; and

(C) contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such statement.

(3) An assessment shall not be made under the second sentence of paragraph (1) with respect to a claim if payment by the Government has not been made on such claim.

(b)(1) Except as provided in paragraphs (2) and (3) of this subsection--

(A) a determination under section 3803(a)(2) of this title that there is adequate evidence to believe that a person is liable under subsection (a) of this section; or

(B) a determination under section 3803 of this title that a person is liable under subsection (a) of this section,

may provide the authority with grounds for commencing any administrative or contractual action against such person which is authorized by law and which is in addition to any action against such person under this chapter.

(2) A determination referred to in paragraph (1) of this subsection may be used by the authority, but shall not require such authority, to commence any administrative or contractual action which is authorized by law.

(3) In the case of an administrative or contractual action to suspend or debar any person who is eligible to enter into contracts with the Federal Government, a determination referred to in paragraph (1) of this subsection shall not be considered as a conclusive determination of such person's responsibility pursuant to Federal procurement laws and regulations.

§ 3803. Hearing and determinations

(a)(1) The investigating official of an authority may investigate allegations that a person is liable under section 3802 of this title and shall report the findings and conclusions of such investigation to the reviewing official of the authority. The preceding sentence does not modify any responsibility of an investigating official to report violations of criminal law to the Attorney General.

(2) If the reviewing official of an authority determines, based upon the report of the investigating official under paragraph (1) of this subsection, that there is adequate evidence to believe that a person is liable under section 3802 of this title, the reviewing official shall transmit to the Attorney General a written notice of the intention of such official to refer the allegations of such liability to a presiding officer of such authority. Such notice shall include--

(A) a statement of the reasons of the reviewing official for the referral of such allegations;

(B) a statement specifying the evidence which supports such allegations;

(C) a description of the claims or statements for which liability under section 3802 of this title is alleged;

(D) an estimate of the amount of money or the value of property or services requested or demanded in violation of section 3802 of this title; and

(E) a statement of any exculpatory or mitigating circumstances which may relate to such claims or statements.

(b)(1) Within 90 days after receipt of a notice from a reviewing official under paragraph (2) of subsection (a), the Attorney General or an Assistant Attorney General designated by the Attorney General shall transmit a written statement to the reviewing official which specifies--

(A) that the Attorney General or such Assistant Attorney General approves or disapproves the referral to a presiding officer of the allegations of liability stated in such notice;

(B) in any case in which the referral of allegations is approved, that the initiation of a proceeding under this section with respect to such allegations is appropriate; and

(C) in any case in which the referral of allegations is disapproved, the reasons for such disapproval.

(2) A reviewing official may refer allegations of liability to a presiding officer only if the Attorney General or an Assistant Attorney General designated by the Attorney General approves the referral of such allegations in a written statement described in paragraph (1) of this subsection.

(3) If the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to an authority head a written finding that the continuation of any hearing under this section with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, such hearing shall be immediately stayed and may be resumed only upon written authorization of the Attorney General.

(c)(1) No allegations of liability under section 3802 of this title with respect to any claim made, presented, or submitted by any person shall be referred to a presiding officer under paragraph (2) of subsection (b) if the reviewing official determines that--

(A) an amount of money in excess of $150,000; or

(B) property or services with a value in excess of $150,000,

is requested or demanded in violation of section 3802 of this title in such claim or in a group of related claims which are submitted at the time such claim is submitted.

(2)(A) Except as provided in subparagraph (B) of this paragraph, no allegations of liability against an individual under section 3802 of this title with respect to any claim or statement made, presented, or submitted, or caused to be made, presented, or submitted, by such individual relating to any benefits received by such individual shall be referred to a presiding officer under paragraph (2) of subsection (b).

(B) Allegations of liability against an individual under section 3802 of this title with respect to any claim or statement made, presented, or submitted, or caused to be made, presented, or submitted, by such individual relating to any benefits received by such individual may be referred to a presiding officer under paragraph (2) of subsection (b) if--

(i) such claim or statement is made by such individual in making application for such benefits;

(ii) such allegations relate to the eligibility of such individual to receive such benefits; and

(iii) with respect to such claim or statement, the individual--

(I) has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(II) acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(III) acts in reckless disregard of the truth or falsity of the claim or statement.

(C) For purposes of this subsection, the term “benefits” means--

(i) benefits under the supplemental security income program under title XVI of the Social Security Act;

(ii) old age, survivors, and disability insurance benefits under title II of the Social Security Act;

(iii) benefits under title XVIII of the Social Security Act;

(iv) assistance under a State program funded under part A of title IV of the Social Security Act;

(v) medical assistance under a State plan approved under section 1902(a) of the Social Security Act;

(vi) benefits under title XX of the Social Security Act;

(vii) benefits under the supplemental nutrition assistance program (as defined in section 3(l) of the Food and Nutrition Act of 2008);

(viii) benefits under chapters 11, 13, 15, 17, and 21 of title 38;

(ix) benefits under the Black Lung Benefits Act;

(x) benefits under the special supplemental nutrition program for women, infants, and children established under section 17 of the Child Nutrition Act of 1966;

(xi) benefits under section 336 of the Older Americans Act;

(xii) any annuity or other benefit under the Railroad Retirement Act of 1974;

(xiii) benefits under the Richard B. Russell National School Lunch Act;

(xiv) benefits under any housing assistance program for lower income families or elderly or handicapped persons which is administered by the Secretary of Housing and Urban Development or the Secretary of Agriculture;

(xv) benefits under the Low-Income Home Energy Assistance Act of 1981; and

(xvi) benefits under part A of the Energy Conservation in Existing Buildings Act of 1976,

which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

(d)(1) On or after the date on which a reviewing official is permitted to refer allegations of liability to a presiding officer under subsection (b) of this section, the reviewing official shall mail, by registered or certified mail, or shall deliver, a notice to the person alleged to be liable under section 3802 of this title. Such notice shall specify the allegations of liability against such person and shall state the right of such person to request a hearing with respect to such allegations.

(2) If, within 30 days after receiving a notice under paragraph (1) of this subsection, the person receiving such notice requests a hearing with respect to the allegations contained in such notice--

(A) the reviewing official shall refer such allegations to a presiding officer for the commencement of such hearing; and

(B) the presiding officer shall commence such hearing by mailing by registered or certified mail, or by delivery of, a notice which complies with paragraphs (2)(A) and (3)(B)(i) of subsection (g) to such person.

(e)(1)(A) Except as provided in subparagraph (B) of this paragraph, at any time after receiving a notice under paragraph (2)(B) of subsection (d), the person receiving such notice shall be entitled to review, and upon payment of a reasonable fee for duplication, shall be entitled to obtain a copy of, all relevant and material documents, transcripts, records, and other materials, which relate to such allegations and upon which the findings and conclusions of the investigating official under paragraph (1) of subsection (a) are based.

(B) A person is not entitled under subparagraph (A) to review and obtain a copy of any document, transcript, record, or material which is privileged under Federal law.

(2) At any time after receiving a notice under paragraph (2)(B) of subsection (d), the person receiving such notice shall be entitled to obtain all exculpatory information in the possession of the investigating official or the reviewing official relating to the allegations contained in such notice. The provisions of subparagraph (B) of paragraph (1) do not apply to any document, transcript, record, or other material, or any portion thereof, in which such exculpatory information is contained.

(f) Any hearing commenced under paragraph (2) of subsection (d) shall be conducted by the

presiding officer on the record in order to determine--

(1) the liability of a person under section 3802 of this title; and

(2) if a person is determined to be liable under such section, the amount of any civil penalty or assessment to be imposed on such person.

Any such determination shall be based on the preponderance of the evidence.

(g)(1) Each hearing under subsection (f) of this section shall be conducted--

(A) in the case of an authority to which the provisions of subchapter II of chapter 5 of title 5 apply, in accordance with--

(i) the provisions of such subchapter to the extent that such provisions are not inconsistent with the provisions of this chapter; and

(ii) procedures promulgated by the authority head under paragraph (3) of this subsection; or

(B) in the case of an authority to which the provisions of such subchapter do not apply, in accordance with procedures promulgated by the authority head under paragraphs (2) and (3) of this subsection.

(2) An authority head of an authority described in subparagraph (B) of paragraph (1) shall by regulation promulgate procedures for the conduct of hearings under this chapter. Such procedures shall include:

(A) The provision of written notice of the hearing to any person alleged to be liable under section 3802 of this title, including written notice of--

(i) the time, place, and nature of the hearing;

(ii) the legal authority and jurisdiction under which the hearing is to be held; and

(iii) the matters of facts and law to be asserted.

(B) The provision to any person alleged to be liable under section 3802 of this title of opportunities for the submission of facts, arguments, offers of settlement, or proposals of adjustment.

(C) Procedures to ensure that the presiding officer shall not, except to the extent required for the disposition of ex parte matters as authorized by law--

(i) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to the hearing to participate; or

(ii) be responsible to or subject to the supervision or direction of the investigating official or the reviewing official.

(D) Procedures to ensure that the investigating official and the reviewing official do not participate or advise in the decision required under subsection (h) of this section or the review of the decision by the authority head under subsection (i) of this section, except as provided in subsection (j) of this section.

(E) The provision to any person alleged to be liable under section 3802 of this title of opportunities to present such person's case through oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(F) Procedures to permit any person alleged to be liable under section 3802 of this title to be accompanied, represented, and advised by counsel or such other qualified representative as the authority head may specify in such regulations.

(G) Procedures to ensure that the hearing is conducted in an impartial manner, including procedures to--

(i) permit the presiding officer to at any time disqualify himself; and

(ii) permit the filing, in good faith, of a timely and sufficient affidavit alleging personal bias or another reason for disqualification of a presiding officer or a reviewing official.

(3)(A) Each authority head shall promulgate by regulation procedures described in subparagraph (B) of this paragraph for the conduct of hearings under this chapter. Such procedures shall be in addition to the procedures described in paragraph (1) or paragraph (2) of this subsection, as the case may be.

(B) The procedures referred to in subparagraph (A) of this paragraph are:

(i) Procedures for the inclusion, in any written notice of a hearing under this section to any person alleged to be liable under section 3802 of this title, of a description of the procedures for the conduct of the hearing.

(ii) Procedures to permit discovery by any person alleged to be liable under section 3802 of this title only to the extent that the presiding officer determines that such discovery is necessary

for the expeditious, fair, and reasonable consideration of the issues, except that such procedures shall not apply to documents, transcripts, records, or other material which a person is entitled to review under paragraph (1) of subsection (e) or to information to which a person is entitled under paragraph (2) of such subsection. Procedures promulgated under this clause shall prohibit the discovery of the notice required under subsection (a)(2) of this section.

(4) Each hearing under subsection (f) of this section shall be held--

(A) in the judicial district of the United States in which the person alleged to be liable under section 3802 of this title resides or transacts business;

(B) in the judicial district of the United States in which the claim or statement upon which the allegation of liability under such section was made, presented, or submitted; or

(C) in such other place as may be agreed upon by such person and the presiding officer who will conduct such hearing.

(h) The presiding officer shall issue a written decision, including findings and determinations, after the conclusion of the hearing. Such decision shall include the findings of fact and conclusions of law which the presiding officer relied upon in determining whether a person is liable under this chapter. The presiding officer shall promptly send to each party to the hearing a copy of such decision and a statement describing the right of any person determined to be liable under section 3802 of this title to appeal the decision of the presiding officer to the authority head under paragraph (2) of subsection (i).

(i)(1) Except as provided in paragraph (2) of this subsection and section 3805 of this title, the decision, including the findings and determinations, of the presiding officer issued under subsection (h) of this section are final.

(2)(A)(i) Except as provided in clause (ii) of this subparagraph, within 30 days after the presiding officer issues a decision under subsection (h) of this section, any person determined in such decision to be liable under section 3802 of this title may appeal such decision to the authority head.

(ii) If, within the 30-day period described in clause (i) of this subparagraph, a person determined to be liable under this chapter requests the authority head for an extension of such 30-day period to file an appeal of a decision issued by the presiding officer under subsection (h) of this section, the authority head may extend such period if such person demonstrates good cause for such extension.

(B) Any authority head reviewing under this section the decision, findings, and determinations of a presiding officer shall not consider any objection that was not raised in the hearing conducted

pursuant to subsection (f) of this section unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the presiding officer for consideration of such additional evidence.

(C) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the presiding officer pursuant to this section. The authority head shall promptly send to each party to the appeal a copy of the decision of the authority head and a statement describing the right of any person determined to be liable under section 3802 of this title to judicial review under section 3805 of this title.

(j) The reviewing official has the exclusive authority to compromise or settle any allegations of liability under section 3802 of this title against a person without the consent of the presiding officer at any time after the date on which the reviewing official is permitted to refer allegations of liability to a presiding officer under subsection (b) of this section and prior to the date on which the presiding officer issues a decision under subsection (h) of this section. Any such compromise or settlement shall be in writing.

§ 3804. Subpoena authority

(a) For the purposes of an investigation under section 3803(a)(1) of this title, an investigating official is authorized to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and data not otherwise reasonably available to the authority.

(b) For the purposes of conducting a hearing under section 3803(f) of this title, a presiding officer is authorized--

(1) to administer oaths or affirmations; and

(2) to require by subpoena the attendance and testimony of witnesses and the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the presiding officer considers relevant and material to the hearing.

(c) In the case of contumacy or refusal to obey a subpoena issued pursuant to subsection (a) or (b) of this section, the district courts of the United States shall have jurisdiction to issue an appropriate order for the enforcement of any such subpoena. Any failure to obey such order of the court is punishable by such court as contempt. In any case in which an authority seeks the enforcement of a subpoena issued pursuant to subsection (a) or (b) of this section, the authority shall request the Attorney General to petition any district court in which a hearing under this chapter is being conducted, or in which the person receiving the subpoena resides or conducts

business, to issue such an order.

§ 3805. Judicial review

(a)(1) A determination by a reviewing official under section 3803 of this title shall be final and shall not be subject to judicial review.

(2) Unless a petition is filed under this section, a determination under section 3803 of this title that a person is liable under section 3802 of this title shall be final and shall not be subject to judicial review.

(b)(1)(A) Any person who has been determined to be liable under section 3802 of this title pursuant to section 3803 of this title may obtain review of such determination in--

(i) the United States district court for the district in which such person resides or transacts business;

(ii) the United States district court for the district in which the claim or statement upon which the determination of liability is based was made, presented, or submitted; or

(iii) the United States District Court for the District of Columbia.

(B) Such review may be obtained by filing in any such court a written petition that such determination be modified or set aside. Such petition shall be filed--

(i) only after such person has exhausted all administrative remedies under this chapter; and

(ii) within 60 days after the date on which the authority head sends such person a copy of the decision of such authority head under section 3803(i)(2) of this title.

(2) The clerk of the court shall transmit a copy of a petition filed under paragraph (1) of this subsection to the authority and to the Attorney General. Upon receipt of the copy of such petition, the authority shall transmit to the Attorney General the record in the proceeding resulting in the determination of liability under section 3802 of this title. Except as otherwise provided in this section, the district courts of the United States shall have jurisdiction to review the decision, findings, and determinations in issue and to affirm, modify, remand for further consideration, or set aside, in whole or in part, the decision, findings, and determinations of the authority, and to enforce such decision, findings, and determinations to the extent that such decision, findings, and determinations are affirmed or modified.

(c) The decisions, findings, and determinations of the authority with respect to questions of fact shall be final and conclusive, and shall not be set aside unless such decisions, findings, and determinations are found by the court to be unsupported by substantial evidence. In concluding whether the decisions, findings, and determinations of an authority are unsupported by substantial evidence, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(d) Any district court reviewing under this section the decision, findings, and determinations of an authority shall not consider any objection that was not raised in the hearing conducted pursuant to section 3803(f) of this title unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the court shall remand the matter to the authority for consideration of such additional evidence.

(e) Upon a final determination by the district court that a person is liable under section 3802 of this title, the court shall enter a final judgment for the appropriate amount in favor of the United States.

§ 3806. Collection of civil penalties and assessments

(a) The Attorney General shall be responsible for judicial enforcement of any civil penalty or assessment imposed pursuant to the provisions of this chapter.

(b) Any penalty or assessment imposed in a determination which has become final pursuant to this chapter may be recovered in a civil action brought by the Attorney General. In any such action, no matter that was raised or that could have been raised in a hearing conducted under section 3803(f) of this title or pursuant to judicial review under section 3805 of this title may be raised as a defense, and the determination of liability and the determination of amounts of penalties and assessments shall not be subject to review.

(c) The district courts of the United States shall have jurisdiction of any action commenced by the United States under subsection (b) of this section.

(d) Any action under subsection (b) of this section may, without regard to venue requirements, be joined and consolidated with or asserted as a counterclaim, cross-claim, or setoff by the United States in any other civil action which includes as parties the United States and the person against whom such action may be brought.

(e) The United States Court of Federal Claims shall have jurisdiction of any action under subsection (b) of this section to recover any penalty or assessment if the cause of action is asserted by the United States as a counterclaim in a matter pending in such court.

(f) The Attorney General shall have exclusive authority to compromise or settle any penalty or assessment the determination of which is the subject of a pending petition pursuant to section 3805 of this title or a pending action to recover such penalty or assessment pursuant to this section.

(g)(1) Except as provided in paragraph (2) of this subsection, any amount of penalty or assessment collected under this chapter shall be deposited as miscellaneous receipts in the Treasury of the United States.

(2)(A) Any amount of a penalty or assessment imposed by the United States Postal Service under this chapter shall be deposited in the Postal Service Fund established by section 2003 of title 39.

(B) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with old age and survivors benefits under title II of the Social Security Act shall be deposited in the Federal Old-Age and Survivors Insurance Trust Fund.

(C) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with disability benefits under title II of the Social Security Act shall be deposited in the Federal Disability Insurance Trust Fund.

(D) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with benefits under part A of title XVIII of the Social Security Act shall be deposited in the Federal Hospital Insurance Trust Fund.

(E) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with benefits under part B of title XVIII of the Social Security Act shall be deposited in the Federal Supplementary Medical Insurance Trust Fund.

§ 3807. Right to administrative offset

(a) The amount of any penalty or assessment which has become final under section 3803 of this title, or for which a judgment has been entered under section 3805(e) or 3806 of this title, or any amount agreed upon in a settlement or compromise under section 3803(j) or 3806(f) of this title, may be collected by administrative offset under section 3716 of this title, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the person liable for such penalty or assessment.

(b) All amounts collected pursuant to this section shall be remitted to the Secretary of the Treasury for deposit in accordance with section 3806(g) of this title.

§ 3808. Limitations

(a) A hearing under section 3803(d)(2) of this title with respect to a claim or statement shall be commenced within 6 years after the date on which such claim or statement is made, presented, or submitted.

(b) A civil action to recover a penalty or assessment under section 3806 of this title shall be commenced within 3 years after the date on which the determination of liability for such penalty or assessment becomes final.

(c) If at any time during the course of proceedings brought pursuant to this chapter the authority head receives or discovers any specific information regarding bribery, gratuities, conflict of interest, or other corruption or similar activity in relation to a false claim or statement, the authority head shall immediately report such information to the Attorney General, and in the case of an authority in which an Office of Inspector General is established by the Inspector General Act of 1978 or by any other Federal law, to the Inspector General of that authority.

§ 3809. Regulations

Within 180 days after the date of enactment of this chapter [Oct. 21, 1986], each authority head shall promulgate rules and regulations necessary to implement the provisions of this chapter. Such rules and regulations shall--

(1) ensure that investigating officials and reviewing officials are not responsible for conducting the hearing required in section 3803(f) of this title, making the determinations required by subsections (f) and (h) of section 3803 of this title, or making collections under section 3806 of this title; and

(2) require a reviewing official to include in any notice required by section 3803(a)(2) of this title a statement which specifies that the reviewing official has determined that there is a reasonable prospect of collecting, from a person with respect to whom the reviewing official is referring allegations of liability in such notice, the amount for which such person may be liable.

[§ 3810. Repealed. Pub.L. 104-66, Title III, § 3001(c)(1), Dec. 21, 1995, 109 Stat. 734]

§ 3811. Effect on other law

(a) This chapter does not diminish the responsibility of any agency to comply with the provisions of chapter 35 of title 44.

(b) This chapter does not supersede the provisions of section 3512 of title 44.

(c) For purposes of this section, the term “agency” has the same meaning as in section 3502(1) of title 44.

§ 3812. Prohibition against delegation

Any function, duty, or responsibility which this chapter specifies be carried out by the Attorney General or an Assistant Attorney General designated by the Attorney General, shall not be delegated to, or carried out by, any other officer or employee of the Department of Justice.

Section 803 would give Department of Defense (DoD) senior officials responsible for major automated information system programs the option of submitting to the congressional defense committees either a critical change report when required, or a streamlined notification when the official further concludes that the critical change occurred primarily due to congressional action, such as a reduction in program funding.

The proposal similarly permits the deployment of a successful system to be extended to additional users without triggering the costly "critical change" evaluation, report and certification requirements. The scope of this opportunity is constrained by adding the definition of an "extension of a program," designed to apply only to programs that (by default) have passed Milestone C and partially deployed, and have been recognized by operational testers as operationally effective and suitable.

This change is submitted as part of the Department's continuing initiative to streamline and promote efficiencies in the congressional reporting requirement process. While the evaluation and report process required by section 2445c of title 10, United States Code, for critical changes often results in useful information for acquisition executives and Congress, it is very time consuming and expensive. The process could be unnecessary when the critical change is the result of congressional action—such a change is more in the nature of an administrative change than a revelation of programmatic problems. The process could be a poor investment when the critical change results from the extension of a successful deployment to additional users late in the program's acquisition lifecycle. In such cases, the senior official should have the option of invoking the full critical change evaluation and report process, or providing the congressional defense committees a streamlined notification. The latter approach would make the committees aware of the program status but would not subject the program to an unnecessary expense. In this era of potential budget cuts that cannot be controlled by the Department, this change will save hundreds of thousands of dollars for each avoided critical change evaluation and certification.

The amendments that would be made by subsection (d) specify that an element of cost information shall be the "total acquisition cost" instead of the "development cost," thereby improving insight into the true costs to develop and initially field a MAIS program. This change will cure some differences of interpretation within the Department and align the statutory text with the reporting practice of the past five years.

The minor amendment that would be made by subsection (e) to section 2445c(g)(2) is offered as a technical correction to more appropriately refer to subsection (d)(1)(B) instead of subsection (d)(2) "Covered Determination" when describing compliance with the reporting requirement.

Budget Implications: The Department estimates a contingency savings of about $860,000 per avoided Critical Change Report, distributed among the Department's various components and the Office of the Secretary of Defense staff. This estimate is based on the net cost of avoiding program evaluation and critical change report expenses, while incurring the expense of creating and coordinating a streamlined notification.

Changes to Existing Law: Section 803 would make the following changes to sections 2445a, 2445b, and 2445c of title 10, United States Code:

§ 2445a. Definitions

(a) MAJOR AUTOMATED INFORMATION SYSTEM PROGRAM.—***

* * * * * * *

(g) EXTENSION OF A PROGRAM.— In this chapter, the term 'extension of a program' means, with respect to a major automated information system program or other major information technology investment program, the further deployment or planned deployment to additional users of the system which has already been found operationally effective and suitable by an independent test agency or the Director of Operational Test and Evaluation, beyond the scope planned in the original estimate or information originally submitted on the program.

§ 2445b. Cost, schedule, and performance information

(a) SUBMITTAL OF COST, SCHEDULE, AND PERFORMANCE INFORMATION.—***

(b) ELEMENTS REGARDING MAJOR AUTOMATED INFORMATION SYSTEM PROGRAMS.—The documents submitted under subsection (a) with respect to a major automated information system program shall include detailed and summarized information with respect to the automated information system to be acquired under the program, and shall specifically include each of the following:

(1) The development schedule, including major milestones.

(2) The implementation schedule, including estimates of milestone dates, full deployment decision and full deployment.

(3) Estimates of ~~development~~ total acquisition costs and full life-cycle costs.

(4) A summary of key performance parameters.

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§ 2445c. Reports: quarterly reports; reports on program changes

(a) SUBMITTAL OF COST, SCHEDULE, AND PERFORMANCE INFORMATION.—***

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(c) REPORT ON SIGNIFICANT CHANGES IN PROGRAM.—

(1) IN GENERAL.—If, based on a quarterly report submitted by the program manager of a major automated information system program pursuant to subsection (a), the senior Department of Defense official responsible for the program makes a determination described in paragraph (2), the official shall, not later than 45 days after receiving such report, notify the congressional defense committees in writing of such determination.

(2) COVERED DETERMINATION.—A determination described in this paragraph with respect to a major automated information system program is a determination that—

(A) there has been a schedule change that will cause a delay of more than six months but less than a year in any program schedule milestone or significant event from the schedule originally submitted to Congress under paragraph (1) or (2) of section 2445b(b) of this title;

(B) the estimated ~~program development cost~~ total acquisition cost or full life-cycle cost for the program has increased by at least 15 percent, but less than 25 percent, over the original estimate submitted to Congress under paragraph (3) of section 2445b(b) of this title; or

(C) there has been a significant, adverse change in the expected performance of the major automated information system to be acquired under the program from the parameters originally submitted to Congress under paragraph (4) of section 2445b(b) of this title.

(d) REPORT ON CRITICAL CHANGES IN PROGRAM**.** —

(1) IN GENERAL.—If, based on a quarterly report submitted by the program manager of a major automated information system program or other major information technology investment program pursuant to subsection (a), the senior Department of Defense official responsible for the program makes a determination described in paragraph (~~2~~3), the official shall, not later than 60 days after receiving such report—

(A) carry out an evaluation of the program under subsection (e); and

(B) submit, through the Secretary of Defense, to the congressional defense committees a report meeting the requirements of subsection (f).

(2) NOTIFICATION WHEN VARIANCE DUE TO CONGRESSIONAL ACTION OR EXTENSION OF PROGRAM.— If a senior Department of Defense official who, following receipt of a quarterly report described in paragraph (1) and making a determination described in paragraph (3), also determines that the circumstances resulting in the determination described in paragraph (3) either (A) are primarily the result of congressional action, or (B) are primarily due to an extension of a program, the official may, in lieu of carrying out an evaluation and submitting a report in accordance with paragraph (1), submit to the congressional defense committees, within 45 days after receiving the quarterly report, a notification that the official has made those determinations. If such a notification is submitted, the limitation in subsection (g)(1) does not apply with respect to that determination under paragraph (3).

(~~2~~3) COVERED DETERMINATION.—A determination described in this paragraph with respect to a major automated information system program or other major information technology investment program is a determination that—

(A) the automated information system or information technology investment failed to achieve a full deployment decision within five years after the Milestone A decision for the program or, if there was no Milestone A decision, the date when the preferred alternative is selected for the program (excluding any time during which program activity is delayed as a result of a bid protest);

(B) there has been a schedule change that will cause a delay of one year or more in any program schedule milestone or significant event from the schedule originally submitted to Congress under paragraph (1) or (2) of section 2445b(b) of this title or section 2445b(d) of this title, as applicable;

(C) the estimated ~~program development cost~~ total acquisition cost or full life-cycle cost for the program has increased by 25 percent or more over the original estimate submitted to Congress under paragraph (3) of section 2445b(b) of this title or section 2445b(d) of this title, as applicable; or

(D) there has been a change in the expected performance of the major automated information system or major information technology investment to be acquired under the program that will undermine the ability of the system to perform the functions anticipated at the time information on the program was originally submitted to Congress under section 2445b(b) of this title or section 2445b(d) of this title, as applicable.

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(g) PROHIBITION ON OBLIGATION OF FUNDS**.** —

(1) If the determination of a critical change to a program is made by the senior Department official responsible for the program under ~~subsection (d)(2)~~subsection (d)(3) and a report is not submitted to Congress within the 60-day period provided by subsection (d)(1), appropriated funds may not be obligated for any major contract under the program.

(2) The prohibition on the obligation of funds for a program under paragraph (1) shall cease to apply on the date on which Congress has received a report ~~in compliance with the requirements of subsection (d)(2)~~under subsection (d)(1)(B).

Section 804 would amend the reporting requirement imposed on Defense Business Systems (DBS) Acquisition Programs by section 811 of the John Warner National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2007 (Public Law 109-364) by clarifying the separate treatment of Major Automated Information Systems (MAIS) DBS and non-MAIS DBS. Specifically, the proposal would clarify that section 811 is inapplicable to MAIS DBS acquisition programs because such programs are independently subject to critical change reporting under section 2445c of title 10, United States Code. This proposal would also modify the requirement for non-MAIS DBS reporting a failure to achieve initial operational capacity (IOC) within five years of Milestone A approval from a critical change report to, instead, a report to the Department of Defense (DoD) pre-certification authority explaining the causes and circumstances surrounding the failure to achieve IOC within the required time.

Section 811 of the FY 2007 NDAA requires the Department to field information technology business systems within five years of Milestone A approval. Section 811(a) prohibits the Milestone Decision Authority from providing Milestone A approval for a DBS without first determining that the system will achieve an initial operating capability in less than five years. Section 811(b) provides that a failure to achieve initial operating capability within five years of Milestone A approval would result in the Department being subject to reporting requirements set forth in section 2445c of title 10, United States Code. Absent being designated as a special interest program, non-MAIS DBS programs fall outside the oversight of the Department of Defense senior leadership. In addition, such programs are not subject to the critical change requirements generally applicable to MAIS and pre-MAIS programs under Section 2445c. Specifically, the two requirements differ in that section 811 of the FY 2007 NDAA applies only to DBS programs of any cost magnitude, while section 2445c of title 10 applies to all MAIS programs, including MAIS DBS.

Congress enacted Section 811 in the FY 2007 NDAA in response to the House Armed Services Committee's concerns "that many large information technology acquisition programs begin with great promise, yet linger in the development phase for many years without delivering

any useful products to the Department." *See* House Report 109-452, National Defense Authorization Act for Fiscal Year 2007 (H.R. 5122), p. 358. As enacted, however, Section 811 applies not only to large DBS programs, but also to DBS programs of any magnitude. In contrast, chapter 144A of title 10 (included in section 816 of the 2007 NDAA) specifically applies to MAIS and pre-MAIS programs of which DBS (if they meet the threshold requirements) is a subset.

When the FY 2007 NDAA was enacted, the requirements of Section 811 and Chapter 144A to meet initial operational capability were identical. Thereafter, Chapter 144A was amended for MAIS programs to reflect that a failure to achieve a Full Deployment Decision within five years from Milestone A -- or if no Milestone A, then from when the preferred alternative was selected -- would result in a critical change. For non-MAIS DBS, the failure to reach IOC within Milestone A results in a critical change. However, with the expansion of the certification requirements under section 2222 of title 10, as modified in the FY 2012 NDAA, Section 811 can now be modified to meet congressional intent by requiring submission of a report to the pre-certification authority explaining the causes and circumstances surrounding the failure to achieve IOC within the required time. Such a modification would highlight to DoD senior leadership, through the Defense Business System certification process, delays in non-MAIS DBS development programs and require consideration of the facts and circumstances surrounding the delay in the decision to certify under section 2222 of title 10.

Budget Implications: Although there is no quantifiable budget implication associated with this proposal, this proposal would improve oversight of non-MAIS DBS by senior DoD leaders, while reserving critical change reporting for MAIS DBS, which are, by definition, large and complex, and warrant significant oversight not only by the Department, but also by Congress.

Changes to Existing Law: Section 804 would make the following changes to section 811 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (P.L. 109-364):

SEC. 811. TIME-CERTAIN DEVELOPMENT FOR DEPARTMENT OF DEFENSE INFORMATION TECHNOLOGY BUSINESS SYSTEMS.

(a) MILESTONE A LIMITATION.—The Department of Defense executive or entity that is the milestone decision authority for an information system described in subsection (c) may not provide Milestone A approval for the system unless, as part of the decision process for such approval, that authority determines that the system will achieve initial operational capability within a specified period of time not exceeding five years.

(b) INITIAL OPERATIONAL CAPABILITY LIMITATION.—If an information system described in subsection (c), having received Milestone A approval, has not achieved initial operational capability within five years after the date of such approval, ~~the system shall be deemed to have undergone a critical change in program requiring the evaluation and report required by section~~

~~2445c(d) of title 10, United States Code (as added by section 816 of this Act).~~ the appropriate official shall report such failure, along with the facts and circumstances surrounding the failure, to the appropriate pre-certification authority for that system under section 2222 of title 10, United States Code, and the information so reported shall be considered by the pre-certification authority in the decision whether to recommend certification of obligations under that section.

(c) COVERED SYSTEMS.—An information system described in this subsection is any Department of Defense information technology business system that is not a national security system, as defined in ~~3542(b)(2)~~ section 2222(j)(2) of title ~~44~~ 10, United States Code, and that is not designated in section 2445a of title 10, United States Code, as a "major automated information system program" or an "other major information technology investment program".

(d) DEFINITIONS.—In this section:

(1) MILESTONE DECISION AUTHORITY.—The term "milestone decision authority" has the meaning given that term in Department of Defense ~~Instruction 5000.2~~ Directive 5000.01, dated May 12, 2003.

(2) MILESTONE A.—The term "Milestone A" has the meaning given that term in Department of Defense Instruction 5000.02, dated ~~May 12, 2003~~ December 3, 2008.

Section 805 would amend section 1491 of title 28, United States Code, to impose timeliness rules at the U.S. Court of Federal Claims (COFC) that will mirror those for bid protests filed with the Government Accountability Office (GAO), thereby reducing the time to decide bid protests by avoiding unnecessarily repetitive protests.

Section 3552 of title 31, United States Code, provides statutory authority for bid protests to be decided by the Government Accountability Office (GAO). P. L. 98–369, div. B, title VII, § 2741(a), July 18, 1984, 98 Stat. 1199. Section 1491(b)(1) of title 28, United States Code, provided temporary concurrent federal jurisdiction between the COFC and the United States District Courts to hear pre-award or post-award bid protest matters. Section 12(d) of the Administrative Disputes Resolution Act of 1996 (P. L. 104-320; 110 Stat. 3870; 5 U.S.C. 571 note) (ADRA), contained a sunset provision that terminated District Court jurisdiction to hear such bid protests under section 1491 as of January 1, 2001, leaving all ADRA bid protest cases under the jurisdiction of the COFC. The jurisdiction of the COFC and the GAO are concurrent. As a result, a protestor may file a protest with the GAO and, if the protest is denied, file suit at the COFC.

The federal bid protest system is fashioned around the two goals of ensuring accountability through visibility in the procurement process while expeditiously resolving bid protests. Expeditious resolution of protests is an express requirement of COFC and GAO jurisdiction. Section 3554(a)(1) of title 31, United States Code, states, "the Comptroller General shall provide for the inexpensive and expeditious resolution of protests" and section 1491(b)(3) of title 28, United States Code, states that "[i]n exercising jurisdiction . . . [the COFC] shall give

due regard to the interests of national defense and national security and the need for expeditious resolution of the action."

The expeditious resolution of protests is greatly hindered by the ability of a protestor to seek redress at GAO and, faced with a negative outcome, then seek another review of the agency's actions by filing a protest with the COFC. In Axiom Resource Management, Inc v. United States, 80 Fed. Cl. 530, 539 (2008), *rev* 564 F.3d 1374 (Fed. Cir. 2009), Axiom challenged an award to Lockheed Martin Federal Healthcare, Inc. ("Lockheed") to perform program management services for the Tricare Management Agency. Axiom alleged the award to Lockheed was improper because Lockheed suffered from a variety of organizational conflicts of interest ("OCIs").

These same allegations had previously been challenged at the GAO. Id. at 1377. In response to two GAO protests, the agency took corrective action to analyze the OCI allegations raised by Axiom. After performing a detailed analysis, the Contracting Officer concluded the alleged OCIs could be avoided or mitigated. The award to Lockheed stood, and Axiom filed a third GAO protest which was denied. Axiom subsequently filed suit at the COFC where, ultimately, the award to Lockheed was set aside. Axiom Res. Mgmt., Inc. v. United States, 80 Fed. Cl. 530, 539 (2008). The COFC decision was ultimately reversed by the Federal Circuit. Axiom Resource Management, Inc v. United States, 564 F.3d 1374 (Fed. Cir. 2009). This protest litigation took nearly two years. A similar procedural history occurred in MASAI Technologies Corp. v. United States, 79 Fed. Cl. 433 (2007). In MASAI, the allegations considered by the COFC had been raised previously at the GAO resulting in corrective action by the agency two times. Id. at 436-40. Ultimately, the Contracting Officer determined the initial award was correct and GAO denied MASAI's protest. In MASAI, however, the COFC agreed with GAO's denial. The MASAI litigation took approximately fourteen months. See also Labatt Food Serv., Inc. v. United States, 577 F.3d 1375 (Fed. Cir. 2009) (one year to resolve) and Ala. Aircraft Indus., Inc.--Birmingham v. United States, 586 F.3d 1372 (Fed. Cir. 2009) (over one year to resolve). At the conclusion of the litigation, the parties in each of these cases found themselves in the same position they held when the GAO issued its decision on the merits of the protests; the agency's actions were ultimately upheld.

By establishment of parallel timelines at GAO and COFC, the statutory requirement for expeditious resolution of protests is maintained, without sacrificing accountability. Regarding pre-award protests, GAO has clearly established timeliness rules.

> Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the

solicitation must be protested not later than the next closing time for receipt of proposals following the incorporation.

4 C.F.R. § 21.2(a)(1).

Neither the Tucker Act nor the ADRA established a unique statute of limitations for COFC bid protests. The COFC can entertain protests "without regard to whether suit is instituted before or after the contract is awarded." 28 U.S.C. § 1491(b)(1) (2006). Under section 2501 of title 28, United States Code, the statute of limitations at the COFC is six years. Several COFC decisions have considered whether or not protests based upon alleged improprieties in a solicitation are barred when filed after the solicitation closing date, with varying outcomes. See TransAtlantic Lines LLC v. United States, 68 Fed. Cl. 48, 52-53 (2005) (GAO rule that limits its advisory role cannot limit the exercise of jurisdiction of the COFC); Software Testing Solutions, Inc. v. United States, 58 Fed. Cl. 533, 535 (2003) (delay in bringing a protest may be considered in the analysis of whether injunctive relief is warranted but not basis for rejecting request); ABF Freight Sys., Inc. v. United States, 55 Fed. Cl. 392, 399-400 (2003) (quoting N.C. Div. of Servs. for the Blind v. United States, 53 Fed. Cl. 147, 165 (2002)) (GAO timeliness rule applied); Aerolease Long Beach v. United States, 31 Fed. Cl. 342, 358 (1994) (citing Logicon, Inc. v. United States, 22 Cl. Ct. 776, 789 (1991) (declining to accept the GAO bid protest timeliness regulations as always controlling).

In 2007, however, the Court of Appeals for the Federal Circuit resolved this issue when it issued its decision in Blue & Gold Fleet, L.P. v. United States, 492 F.3d 1308 (Fed. Cir. 2007). In that decision the Federal Circuit held that ". . . a party who has the opportunity to object to the terms of a government solicitation containing a patent error and fails to do so prior to the close of the bidding process waives its ability to raise the same objection subsequently in a bid protest action in the Court of Federal Claims." Id. at 1313. Accordingly, with respect to protests based upon solicitation improprieties, the Federal Circuit has, in essence, adopted the GAO bid protest timeliness regulation.

The same cannot be said for post-award bid protests. As discussed, the COFC will consider protests filed after consideration by GAO and months after contract award. In PlanetSpace Inc. v. United States, 92 Fed. Cl. 520 (2010), the United States sought to bar the protestor's claim under the doctrine of laches since the protestor filed at the COFC three months after losing its GAO protest and seven months after contract award. The COFC held,

Even if the court . . . were to conclude that there was no reason for the delay in filing, defendant's laches argument would still fail. "When a limitation on the period for bringing suit has been set by statute, laches will generally not be invoked to shorten the statutory period." *Adv. Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc.*, 988 F.2d 1157, 1161 (Fed. Cir. 1993) (citing *Cornetta v. United States*, 851 F.2d 1372, 1377-78 (Fed. Cir. 1988) (*en banc*)). This bid protest is properly before the court pursuant to 28 U.S.C. § 1491(b) and thus is governed by the Tucker

Act's six-year statute of limitations set forth at 28 U.S.C. § 2501. Absent "extraordinary circumstances," this court will not invoke laches to bar an otherwise timely protest. *CW Gov't Travel, Inc.*, 61 Fed. Cl. 559, 569 (2004) ("Had Congress wanted to set a statute of limitations on bid protest actions, it would have done so. Because Congress did not so limit the jurisdiction of this court to hear such actions, we would be reluctant to invoke laches except under extraordinary circumstances that are not present in this case."). To be sure, defendant has not cited, and the court is not aware of, a single instance in which the court invoked laches to bar a bid protest that was filed a mere three months after a failed GAO protest or a mere seven months after contract award. Id. at 531. The Court noted that should the protestor succeed on the merits of the case, the requested injunctive relief is not automatic. Thus, similar to the pre-award decision in Software Testing Solutions, supra, the delay in filing is properly considered in determining whether injunctive relief is appropriate, but does not preclude review of the underlying protest.

Despite the COFC's willingness to consider a delay in filing in fashioning its remedy, the disruption to the procurement process and associated costs and uncertainties stemming with serial protests and the lack of a reasonable statute of limitations for COFC protests outweigh any perceived benefit. For these reasons, 28 U.S.C. 1491 should be amended to impose jurisdictional limitations that parallel those imposed at GAO.

Specifically, subsection (a) of the proposal strikes any reference to the United States district courts and makes clear that only the COFC has jurisdiction to provide judicial review of bid protests. By eliminating references to the district courts, section 1491(b) is reconciled with the sunset provisions of the ADRA that ended district court bid protest jurisdiction in 2001, and with section 861 of the FY 2012 National Defense Authorization Act (P. L. 112-81) that ended district court jurisdiction over bid protests pertaining to the award of maritime contracts.

Subparagraph (a)(2)(B) of the proposal lays out the timeliness rules for bid protests by adding four new subparagraphs to section 1491(b)(1):

—It would add a new subparagraph (A) which will impose time limits for bringing a pre-award bid protest before the COFC. A pre-award protest is a challenge to a solicitation before award is made. This provision requires that such protests be brought before the receipt of proposals. If an objectionable provision is introduced by an amendment to the original solicitation, any protest must be brought before the revised date for submittal of proposals as forth set in the amendment to the solicitation. This provision makes these time limits jurisdictional. The Federal Circuit's decision in *Blue & Gold Fleet, L.P. v. United States*, 492 F.3d 1308 (Fed. Cir. 2007) began the process of aligning COFC practice with that of the GAO in the area of pre-award timeliness. There, the Federal Circuit effectively applied the pre-award timeliness rules of the GAO to bid protests filed at the COFC by ruling that a party that failed to challenge the terms of a solicitation prior to the close of the bidding process waived its ability to do so after award. Subsequent COFC decisions emphasized that this time bar is based

upon the doctrine of waiver, and is not jurisdictional. In at least one decision the COFC therefore considered untimely pre-award protest allegations in determining whether a protester possessed sufficient standing to bring a COFC protest. The above language fully aligns GAO practice with COFC practice by mirroring precisely the GAO timeliness rules at 4 C.F.R. § 21.2(a)(2), and making the bar to untimely COFC pre-award protests jurisdictional.

—It would add a new subparagraph (B) to impose a time limit for bringing a post-award protest before the COFC, which is almost invariably a challenge to a contract award decision. This language is closely modeled on the GAO timeliness rules at 4 C.F.R. § 21.2(a)(2). This section imposes a 10-day time limit on bringing bid protests from when the basis of the protest was known or should have been known. It tolls that 10-day period for required debriefings in order to encourage debriefings, which are designed to avoid protests by providing information to disappointed offerors.

—It would add a new subparagraph (C) to section 1491(b)(1) to ensure COFC bid protests in much the same manner as GAO. Specifically, the Federal Acquisition Regulations encourage the resolution of protests at the agency level, if possible. The GAO rules further this policy because the GAO will consider a bid protest that is filed outside the 10-day period if the protester first brings a timely protest to the agency (referred to as an "agency-level protest"). See 4 C.F.R. § 21.2(a)(3). The new subparagraph (C) will apply the same concept to COFC bid protests. Also, COFC case law has held that an offeror that fails to submit a proposal before the date set for receipt of proposals is not an interested party to protest. This provision allows a protester to pursue a pre-award, agency-level protest and still bring its protest to the COFC even if it does not submit a proposal and even if the date set for receipt of proposals elapses.

—Finally it would add a new subparagraph (D) to section 1491(b)(1) that would align COFC practice with the GAO requirement that protests be timely on their face, and if not, they are dismissed. It also reconciles COFC practice with the GAO requirement at 4 C.F.R. § 21.1(c)(4) that a protester set forth a detailed legal and factual basis of protest. This prevents protesters from presenting a protest in piecemeal fashion and unduly delaying an agency procurement based upon mere speculation about agency misconduct or error. Finally it makes clear that the COFC shall not consider a protest that is untimely because it was first filed at the GAO, thus underlining the choice of forum requirement which is the object of the proposal.

Subsection (b) of the proposal ensures that a protestor may not receive both injunctive relief and monetary relief as they can under the current section 1491(b). As the Department of Justice has noted, a protester that receives injunctive relief is made whole relative to its competitors. If it receives monetary relief in addition, it receives a windfall. Therefore, a protester should be entitled to injunctive relief or monetary relief, but not both.

Subsection (c) of the proposal clarifies that none of the proposed changes to 1491(b) are intended to infringe on the COFC's jurisdiction to review agency overrides of CICA stays, and to enjoin such overrides when appropriate.

Subsection (d) provides a delayed effective date for this provision. A 180-day effective date is appropriate due to the impact on the existing rights of interested parties resulting from shortening the statute of limitations from six years to ten days. It could be prejudicial to interested parties seeking to take full advantage of their current statutory rights by providing for an effective date which cuts off those rights with a shorter notice period. Currently, interested parties have the ability to file a protest with GAO with the expectation that they can also file a protest with the COFC if unsuccessful at GAO. If a protester files its protest at the ten day limit, and GAO uses the entire 100-day statutory period to issue its protest decision, the GAO process will have taken nearly four months. An effective date of 180 days provides interested parties with a reasonable time to file with the COFC prior to the statutory change taking effect.

By harmonizing the timeliness rules between the COFC and the GAO, a protester would be forced to make a choice of forum in deciding where to bring its protest. The improvements to the protest system would be as follows: (1) the amount of time that could be consumed by protests would be reduced, (2) scarce agency procurement resources would be conserved by ensuring that two separate trial-level forums do not adjudicate the same bid protest, and (3) protesters would be assured of accountability and transparency no matter which forum they elected. This reform would largely eliminate an unintended "forum shopping" practice that has arisen under the existing bid protest system, and would materially contribute to the expeditious yet fair resolution of bid protests.

Budget Implications: The proposal has no budgetary impact. Modifying the filing deadlines of the Court of Federal Claims to parallel those of the Government Accountability Office does not change costs. Regardless of where or when a bid protest is filed, it must be defended.

Changes to Existing Law: Section 805 would make the following change to section 1491 of title 28, United States Code:

§ 1491. Claims against United States generally; actions involving Tennessee Valley Authority

(a)(1) The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(2) To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Court of Federal Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under section 7104(b)(1) of title 41, including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Act.

(b)(1) ~~Both the Unites States Court of Federal Claims and the district courts of the United States~~ The United States Court of Federal Claims shall have jurisdiction to render judgment on an action by an interested party objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement. ~~Both the United States Court of Federal Claims and the district courts of the United States~~ The United States Court of Federal Claims shall have jurisdiction to entertain such an action without regard to whether suit is instituted before or after the contract is awarded, but such jurisdiction is subject to the time limits as follows.

(A) A protest based upon alleged improprieties in a solicitation that are apparent before bid opening or the time set for receipt of initial proposals shall be filed before bid opening or the time set for receipt of initial proposals. In the case of a procurement where proposals are requested, alleged improprieties that do not exist in the initial solicitation but that are subsequently incorporated into the solicitation shall be protested not later than the next closing time for receipt of proposals following the incorporation. A protest that meets these time limitations that was previously filed with the Comptroller General may not be reviewed.

(B) A protest other than one covered by subparagraph (A) shall be filed not later than 10 days after the basis of the protest is known or should have been known (whichever is earlier), with the exception of a protest challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required. In such a case, with respect to any protest the basis of which is known or should have been known either before or as a result of the debriefing, the initial protest shall not be filed before the debriefing date offered to the protester, but shall be filed not later than 10 days after the date on which the debriefing is held.

(C) If a timely agency-level protest was previously filed, any subsequent protest to the United States Court of Federal Claims that is filed within 10 days of actual or constructive knowledge of initial adverse agency action shall be considered, if the agency-level protest was filed in accordance with subparagraphs (A) and (B), unless the contracting agency imposes a more stringent time for filing the protest, in which case the agency's time for filing shall control. In a case where an alleged impropriety in a

solicitation is timely protested to a contracting agency, any subsequent protest to the United States Court of Federal Claims shall be considered timely if filed within the 10-day period provided by this subparagraph, even if filed after bid opening or the closing time for receipt of proposals.

(D) A protest untimely on its face shall be dismissed. A protester shall include in its protest all information establishing the timeliness of the protest; a protester shall not be permitted to introduce for the first time in a motion for reconsideration information necessary to establish that the protest was timely. Under no circumstances may the United States Court of Federal Claims consider a protest that is untimely because it was first filed with the Government Accountability Office.

(2) To afford relief in such an action, the courts may award any relief that the court considers proper, including declaratory and injunctive relief, except that monetary relief shall not be available if injunctive relief is or has been granted, and any monetary relief shall be limited to bid preparation and proposal costs.

(3) In exercising jurisdiction under this subsection, the courts shall give due regard to the interests of national defense and national security and the need for expeditious resolution of the action.

(4) In any action under this subsection, the courts shall review the agency's decision pursuant to the standards set forth in section 706 of title 5.

(5) The United States Court of Federal Claims shall have jurisdiction to render judgment on an action by an interested party challenging an agency's decision to override a stay of contract award or contract performance that would otherwise be required by section 3553 of title 31.

~~(5)~~ (6) If an interested party who is a member of the private sector commences an action described in paragraph (1) with respect to a public-private competition conducted under Office of Management and Budget Circular A–76 regarding the performance of an activity or function of a Federal agency, or a decision to convert a function performed by Federal employees to private sector performance without a competition under Office of Management and Budget Circular A–76, then an interested party described in section 3551(2)(B) of title 31 shall be entitled to intervene in that action.

~~(6)~~ (7) Jurisdiction over any action described in paragraph (1) arising out of a maritime contract, or a solicitation for a proposed maritime contract, shall be governed by this section and shall not be subject to the jurisdiction of the district courts of the United States under the Suits in Admiralty Act (chapter 309 of title 46) or the Public Vessels Act (chapter 311 of title 46).

(c) Nothing herein shall be construed to give the United States Court of Federal Claims jurisdiction of any civil action within the exclusive jurisdiction of the Court of International Trade, or of any action against, or founded on conduct of, the Tennessee Valley Authority, or to amend or modify the provisions of the Tennessee Valley Authority Act of 1933 with respect to actions by or against the Authority.

Section 806: Section 1635 of the National Defense Authorization Act (NDAA) for Fiscal Year 2008 established the Interagency Program Office (IPO) as the single point of accountability for the Department of Defense (DoD) and the Department of Veterans Affairs (VA) in the rapid

development and implementation of electronic health record (EHR) systems. The IPO continues to oversee and coordinate the Departments' efforts in support of ongoing projects such as the Captain James A. Lovell Federal Health Care Center in North Chicago, Illinois and the Virtual Lifetime Electronic Record (VLER) Initiative. The latter will provide comprehensive health, benefits, and administrative information, including personnel records and military history records, as a result of the ability to securely and seamlessly locate and exchange data among relevant entities—i.e., DoD, VA, Social Security Administration, private health care providers, private health information exchange partners, and other Federal, state and local governmental partners.

While the IPO continues its historical role to support and enhance interoperability of electronic health care information between the Departments, the IPO also embodies and effectuates a fundamental shift in how DoD and VA collaborate. Faced with a mutual need to modernize legacy systems, in fiscal year 2011 the Departments agreed to implement a joint, common EHR platform, purchasing commercially available components for joint use whenever possible and cost effective. On June 23, 2011, the DoD and VA Secretaries approved plans to implement this integrated EHR (iEHR) and created a governance structure. The iEHR will provide a comprehensive, longitudinal, electronic health record that is available anytime, anywhere for each patient's lifetime. The overarching goal is to create an authoritative source of health information for the estimated 18 million DoD and VA beneficiaries. The iEHR will deliver a highly flexible, reliable, secure, maintainable and sustainable system. Successful fielding of iEHR will result in enhanced quality of care, reduced costs, and improved data visibility. Comprehensive and current health information collected from multiple sources will be readily accessible by DoD and VA providers in theater, garrison and at VA facilities. This readily accessible health information will optimize medical care, monitor force health, manage health risks, and enhance individual performance.

In October 2011 the Departments re-chartered the IPO, significantly expanding its role to lead DoD and VA in the development and implementation of iEHR and VLER Health. Centralizing responsibility for the implementation of these systems, capabilities, and initiatives under the IPO is crucial for achieving full information interoperability between the Departments to better serve Service members, veterans and other eligible beneficiaries.

This proposal recognizes that goods and services are acquired on behalf of the IPO with both VA and DoD funds, utilizing VA and DoD contracting officers and contracting rules, with the acquired goods and services used by the IPO to develop and implement the integrated electronic health and VLER Health records for the benefit of both DoD and the VA. Procurements on behalf of the IPO, including acquisitions performed by the VA for the IPO (and hence for DoD, too), should reflect the principle underlying establishment of the IPO—namely, integrated operations to create an integrated electronic health record and virtual lifetime electronic record that is seamless across DoD and the VA. So when the VA procures on behalf of the IPO (and hence also for DoD), the VA has a stake in the outcome as a user of the resultant

integrated records systems unlike when non-Defense agencies procure for DoD in other circumstances. Another difference is the IPO's oversight and leadership; the IPO is comprised of VA and DoD officials. Currently, Section 801 is contrary to the integrated approach sought through the establishment of the IPO, which this legislative proposal would rectify. The limitations imposed by section 801(b)(2)(A) of the National Defense Authorization Act for Fiscal Year 2008 are unduly burdensome and unnecessary when applied to the IPO.

Changes to Existing Law: Section 806 would amend section 801(b)(2)(A) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 204; 10 U.S.C. 2304 note) as follows:

SEC. 801. INTERNAL CONTROLS FOR PROCUREMENTS ON BEHALF OF THE DEPARTMENT OF DEFENSE BY CERTAIN NONDEFENSE AGENCIES.

(a) INSPECTORS GENERAL REVIEWS AND DETERMINATIONS.—

(1) IN GENERAL.— * * *

* * * * *

(b) LIMITATION ON PROCUREMENTS ON BEHALF OF DEPARTMENT OF DEFENSE.—

(1) Except as provided in paragraph (2), an acquisition official of the Department of Defense may place an order, make a purchase, or otherwise procure property or services for the Department of Defense in excess of the simplified acquisition threshold through a non-defense agency only if—

(A) in the case of a procurement by any non-defense agency in any fiscal year, the head of the non-defense agency has certified that the non-defense agency will comply with defense procurement requirements for the fiscal year;

(B) in the case of—

(i) a procurement by a covered non-defense agency in a fiscal year for which a memorandum of understanding is required by subsection (a)(4), the Inspector General of the Department of Defense and the Inspector General of the covered non-defense agency have entered into such a memorandum of understanding; or

(ii) a procurement by a covered non-defense agency in a fiscal year following the Inspectors General review and determination required by subsection (a), the Inspectors General have determined that a covered non-defense agency is compliant with defense procurement requirements or have terminated a prior determination of non-compliance in accordance with subsection (a)(5); and

(C) the procurement is not otherwise prohibited by section 817 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364) or section 811 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163).

(2) EXCEPTION FOR PROCUREMENTS OF NECESSARY PROPERTY AND SERVICES.—

(A) IN GENERAL.—The limitation in paragraph (1) shall not apply to the procurement of property and services on behalf of—

(i) the Department of Defense by a non-defense agency during any fiscal year for which there is in effect a written determination of the Under Secretary of Defense for Acquisition, Technology, and Logistics that it is necessary in the interest of the Department of Defense to procure property and services through the non-defense agency during such fiscal year; or

(ii) the Department of Defense and Department of Veterans Affairs interagency program office established under section 1635 of this Act.

(B) SCOPE OF PARTICULAR EXCEPTION.—A written determination with respect to a non-defense agency under subparagraph (A)(i) shall apply to any category of procurements through the non-defense agency that is specified in the determination.

(c) GUIDANCE ON INTERAGENCY CONTRACTING.—

(1) REQUIREMENT.— * * *

* * * * *

Section 807 would establish a five-year pilot program to allow DoD to license DoD-owned intellectual property that may or may not be patented, and to retain associated royalties consistent with existing statutes on patent licensing, 35 U.S.C. 209, and royalties, 15 U.S.C. 3710c.

This proposal would enhance the Department's ability to license valuable technologies and intellectual property that it has developed, but which may or may not be eligible for patent protection. In today's fast-paced economy, it is essential to keep pace with cutting edge technologies. Some private companies have adapted to this trend by choosing, if possible, to protect their most valuable intellectual property under trade secret or copyright law, rather than pursue patent protection. Relying solely on the patent system can be relatively expensive and protracted, typically taking from 18 months to three years to receive a patent. In certain fast-paced technology areas such as computer software the technology may be obsolete by the time a patent is issued. In contrast, copyright for software is available automatically, requiring no publication or registration. The voluntary U.S. system for copyright registration is relatively speedy and inexpensive. There is no registration system for trade secrets. Relevant laws require that the owner of a trade secret take reasonable measures to maintain its secrecy.

Presently, DoD primarily uses the patent system to protect and license its technologies. There is no copyright protection for Government-developed works, and only extremely limited opportunities for protection that is similar to a trade secret. For example, technologies developed by the Government under a Cooperative Research and Development Agreement (CRADA) may be protected from release under the Freedom of Information Act for up to five years (see 15 U.S.C. 3710a(c)(7)(B)). The Department of Defense often finds it is difficult to

identify a private entity that is willing to invest time and money to develop and refine a technology unless it would receive some form of intellectual property protection prohibiting competitors from engaging in unfair business practices or infringement. As a result, many existing DoD laboratories find their cutting edge technologies are not utilized, refined, or commercialized in the most cost effective and efficient manner.

This section would remedy this situation by providing a limited mechanism for DoD organizations to license valuable in-house technologies without incurring the expense and delays of the patent system. DoD organizations would be permitted to license computer software developed at the laboratory for royalties or royalty-free, as they see fit. The proposal facilitates the Department's technology transfer effort, and ensures that a licensee's time, effort, and investment is protected, by permitting the DoD to restrict unlicensed uses of that technology, including exemption from any mandatory unlicensed release under FOIA for 5 years (modeled after 15 U.S.C. 3710a(c)(7)(B)). It also would permit DoD to retain and distribute any royalties it receives under these licenses under the same conditions that already apply to royalties received for patent licenses (see 15 USC 3710c).

This proposal would establish a five year pilot program to allow DoD to license DoD-owned intellectual property that may or may not be patented, and to retain associated royalties consistent with existing statutes on patent licensing, 35 U.S.C. 209, and royalties, 15 U.S.C. 3710c. The proposed legislation would also enhance DoD's ability to license valuable technologies and intellectual property that it has developed, but which may or may not be eligible for patent protection.

Budget Implications: None. The proposal seeks authority to treat software licensing the same as patent licensing and any royalties the same as patent license royalties. Such royalties would have a beneficial impact on DoD laboratories only if software licenses were executed.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Services and Defense Wide	.5	.5	.5	.5	.5	RDT&E	BA1-3	Various	Various
Total	.5	.5	.5	.5	.5	--	--	--	--

Changes to Existing Law: Section 807 would not change the text of an existing statute.

Section 808 would extend through September 30, 2017, authority for the Secretary of Defense, acting through the Assistant Secretary of Defense for Research and Engineering and the service acquisition executive for each military department, to carry out programs to award cash prizes in recognition of outstanding achievements in basic, advanced, and applied research, technology development, and prototype development that have the potential for application to the performance of the military missions of the Department of Defense. The authority to award prizes under that section expires on September 30, 2013.

Budget Implications: None, prize programs are funded out of existing budget line items for research and would not require any new appropriation.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Services and Defense Wide	10.0	10.0	10.0	10.0	-	RDT&E	BA1-3	Various	Various
Total	10.0	10.0	10.0	10.0	-	--	--	--	--

Changes to Existing Law: **Section 808** would make the following change to section 2374a of title 10, United States Code:

§ 2374a. Prizes for advanced technology achievements

(a) AUTHORITY.—The Secretary of Defense, acting through the Assistant Secretary of Defense for Research and Engineering and the service acquisition executive for each military department, may carry out programs to award cash prizes in recognition of outstanding achievements in basic, advanced, and applied research, technology development, and prototype development that have the potential for application to the performance of the military missions of the Department of Defense.

(b) COMPETITION REQUIREMENTS.—Each program under subsection (a) shall use a competitive process for the selection of recipients of cash prizes. The process shall include the widely-advertised solicitation of submissions of research results, technology developments, and prototypes.

(c) LIMITATIONS.—(1) The total amount made available for award of cash prizes in a fiscal year may not exceed $10,000,000.

(2) No prize competition may result in the award of more than $1,000,000 in cash prizes without the approval of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(d) RELATIONSHIP TO OTHER AUTHORITY.—A program under subsection (a) may be carried out in conjunction with or in addition to the exercise of any other authority of an official referred to in that subsection to acquire, support, or stimulate basic, advanced and applied research, technology development, or prototype projects.

(e) ANNUAL REPORT.—

(1) IN GENERAL.—Not later than March 1 of each year, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the activities carried out during the preceding fiscal year under the authority in subsection (a).

(2) INFORMATION INCLUDED.—The report for a fiscal year under this subsection shall include, for each program under subsection (a), the following:

(A) A description of the proposed goals of the competitions established under the program, including the areas of research, technology development, or prototype development to be promoted by such competitions and the relationship of such areas to the military missions of the Department of Defense.

(B) An analysis of why the utilization of the authority in subsection (a) was the preferable method of achieving the goals described in subparagraph (A) as opposed to other authorities available to the Department, such as contracts, grants, and cooperative agreements.

(C) The total amount of cash prizes awarded under the program, including a description of the manner in which the amounts of cash prizes awarded and claimed were allocated among the accounts of the Department for recording as obligations and expenditures.

(D) The methods used for the solicitation and evaluation of submissions under the program, together with an assessment of the effectiveness of such methods.

(E) A description of the resources, including personnel and funding, used in the execution of the program, together with a detailed description of the activities for which such resources were used and an accounting of how funding for execution was allocated among the accounts of the Department for recording as obligations and expenditures.

(F) A description of any plans to transition the technologies or prototypes developed as a result of the program into an acquisition program of the Department.

(3) SUSPENSION OF AUTHORITY FOR FAILURE TO INCLUDE INFORMATION.—For each program under subsection (a), the authority to obligate or expend funds under that program is suspended as of the date specified in paragraph (1) if the Secretary does not, by that date, submit a report that includes, for that program, all the information required by paragraph (2). As of the date on which the Secretary does submit a report that includes, for that program, all the information required by paragraph (2), the suspension is lifted.

(f) PERIOD OF AUTHORITY.—The authority to award prizes under subsection (a) shall terminate at the end of September 30, ~~2013~~ 2017.

Section 809 would remove the restrictions on the Secretary of Defense for providing financial assistance to participants in the Department of Defense (DoD) Science, Mathematics, and Research for Transformation (SMART) program. Subsection (b)(2) of section 2192a(b) of title 10, United States Code, reads, "The amount of the financial assistance provided under a scholarship or fellowship awarded to a person under this subsection shall be the amount determined by the Secretary of Defense as being necessary to pay all educational expenses incurred by that person, including tuition, fees, cost of books, laboratory expenses, equipment expenses, and expenses of room and board." The proposed amendment would remove the specific items for which financial assistance may be provided.

The revision would create three major benefits for the SMART Program. First, it would increase the flexibility that the Secretary of Defense will be able to exercise in administration of the SMART Program and will lessen the administrative burden in SMART Program operations. Second, it would allow the Secretary to make SMART Program stipend costs more consistent with other Federal scholarship-for-service educational programs (SMART stipends presently range from $25,000.00 to $38,000.00 per year—significantly above other similar programs).

In addition, the proposal would remove the restriction that only United States citizens can participate in the program. By removing this restriction, the Department could reach out beyond U.S. citizens to participate in the program with the goal of bringing on the best and brightest to DoD laboratories.

Budget Implications: The increased flexibility and efficiency that the revision affords will allow the Secretary to reallocate SMART funds. The reallocation will enable the Secretary to manage the SMART Program more efficiently and potentially provide additional SMART scholarships. This proposal would not require any additional appropriation of funds. The SMART program is fully funded within the existing National Defense Education Program:

	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
National Defense Education Program,	48.7	54.7	55.3	49.6	47.9	Defense-Wide RDT&E	01	05	0601120D8Z
Total	48.7	54.7	55.3	49.6	47.9				

Changes to Existing Law: Section 809 would amend section 2192a of title 10, United States Code, as follows:

§ 2192a. Science, Mathematics, and Research for Transformation (SMART) Defense Education Program

(a) REQUIREMENT FOR PROGRAM. —The Secretary of Defense shall carry out a program to provide financial assistance for education in science, mathematics, engineering, and technology skills and disciplines that, as determined by the Secretary, are critical to the national security functions of the Department of Defense and are needed in the Department of Defense workforce.

(b) FINANCIAL ASSISTANCE.—(1) Under the program under this section, the Secretary of Defense may award a scholarship or fellowship in accordance with this section to a person who –

~~(A) is a citizen of the United States;~~

~~(B)~~(A) is pursuing an associate's degree, undergraduate degree, or advanced degree in a critical skill or discipline described in subsection (a) at an accredited institution of higher education; and

~~(C)~~(B) enters into a service agreement with the Secretary of Defense as described in subsection (c).

(2) The amount of the financial assistance provided under a scholarship or fellowship awarded to a person under this subsection shall be an amount determined by the Secretary of Defense ~~the amount determined by the Secretary of Defense as being necessary to pay all educational expenses incurred by that person, including tuition, fees, cost of books, laboratory expenses, equipment expenses, and expenses of room and board~~.

(3) Financial assistance provided under a scholarship or fellowship awarded under this section may be paid directly to the recipient of such scholarship or fellowship or to an administering entity for disbursement of the funds.

(4) For the purposes of paragraph (1), a scholarship or fellowship awarded to a person who is not a citizen of the United States may only be awarded with the concurrence of the Secretary of State.

(c) SERVICE AGREEMENT FOR RECIPIENTS OF FINANCIAL ASSISTANCE.—(1) To receive financial assistance under this section—

(A) in the case of an employee of the Department of Defense, the employee shall enter into a written agreement to continue in the employment of the department for the period of obligated service determined under paragraph (2); and

(B) in the case of a person not an employee of the Department of Defense, the person shall enter into a written agreement to accept and continue employment in the Department of Defense for the period of obligated service determined under paragraph (2).

(2) For the purposes of this subsection, the period of obligated service for a recipient of financial assistance under this section shall be the period determined by the Secretary of Defense as being appropriate to obtain adequate service in exchange for such financial assistance. The period of service required of a recipient may not be less than the total period of pursuit of a degree that is covered by such financial assistance. The period of obligated service is in addition to any other period for which the recipient is obligated to serve in the civil service of the United States.

(3) An agreement entered into under this subsection by a person pursuing an academic degree shall include any terms and conditions that the Secretary of Defense determines necessary to protect the interests of the United States or otherwise appropriate for carrying out this section.

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TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Section 901: The Department believes that the precedence for the Principal Deputy Under Secretaries of Defense (PDUSDs), subsection 137a(d) of title 10, United States Code, needs to be as specific as the precedence for the Assistant Secretaries of Defense (ASDs), subsection 138(d), on the relationship to the officials identified in section 131(b)(4) (namely, the General Counsel, Inspector General, Director of Operational Test and Evaluation, and Director of Cost Assessment and Program Evaluation).

Consistent with section 138(d), which states that the ASDs "take precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, the Secretaries of the military departments, the Under Secretaries of Defense, the Deputy Chief Management Officer of the Department of Defense, the officials serving in positions specified in section 131(b)(4) of this title, and the Principal Deputy Under Secretaries of Defense," this proposal would clarify that the order of precedence for the PDUSDs would be immediately following the officials serving in the positions specified in section 131(b)(4).

The proposed modification to section 137a(d) is also consistent with sections 131(b)(1) through 131(b)(7) which lists Defense officials in the apparent order of precedence.

The DoD Order of Precedence (derived from these statutory provisions) is used to determine the order for executive schedule, general officer/flag officer, and civilian senior executive employees of the DoD for the following purposes: (1) official visit activities; (2) seating arrangements and similar requirements at official functions, aboard government aircraft, and other activities requiring precedence decisions; (3) assignment of government quarters; and (4) for other administrative matters as prescribed in DoD issuances.

The methodology used in ordering officials for this list begins with: (1) the statutory prescription on precedence contained in United States Code; (2) well established, widely accepted principles, procedures, and traditions; and (3) inputs from component administrative assistants, personnel, and protocol officials provided through Department-wide coordination; and then, as necessary, the exercise of discretionary authority delegated by the Secretary and Deputy Secretary of Defense to the Director of Administration and Management.

Maintaining a consistent and rationalized order of precedence among the most senior Defense officials, including executive schedule, general officer/flag officer, and civilian senior executive employees, is critical to the function of the Department. Precedence often establishes protocol for ceremonial and official representational duties and responsibilities; determines status for official travel and housing; and provides context and protocol for officials in meetings, conferences, and other functions. The Order of Precedence is also a reflection of the scope and measure of current duties of certain officials who would not otherwise find themselves included on the list, i.e. the Commander, International Security Assistance Force—Afghanistan. In this way, the top priorities of the Department are displayed and harmonized.

Efficient day-to-day operation of the Department requires that the statutory prescription with regards to precedence of defense officials, as well as all other statutory guidance, be unambiguous. Elimination of doubt regarding proper ranking of officials also prevents personnel who plan official events and coordinate logistics for senior officials from expending time and resources attempting to determine the correct order of precedence.

Changes to Existing Law: **Section 901** makes the following changes to existing law:

TITLE 10, UNITED STATES CODE

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CHAPTER 4—OFFICE OF THE SECRETARY OF DEFENSE

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§ 131. Office of the Secretary of Defense

(a) ***

(b) The Office of the Secretary of Defense is composed of the following:

(1) The Deputy Secretary of Defense.

(2) The Under Secretaries of Defense, as follows:

(A) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

(B) The Under Secretary of Defense for Policy.

(C) The Under Secretary of Defense (Comptroller).

(D) The Under Secretary of Defense for Personnel and Readiness.

(E) The Under Secretary of Defense for Intelligence.

(3) The Deputy Chief Management Officer of the Department of Defense.

(4) Other officers who are appointed by the President, by and with the advice and consent of the Senate, and who report directly to the Secretary and Deputy Secretary without intervening authority, as follows:

(A) The Director of Cost Assessment and Program Evaluation.

(B) The Director of Operational Test and Evaluation.

(C) The General Counsel of the Department of Defense.

(D) The Inspector General of the Department of Defense.

(5) The Principal Deputy Under Secretaries of Defense.

(6) The Assistant Secretaries of Defense.

(7) ***

§ 137a. Principal Deputy Under Secretaries of Defense

(a) ***

(d) The Principal Deputy Under Secretaries of Defense take precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, the Secretaries of the military departments, the Under Secretaries of Defense, ~~and the Deputy Chief Management Officer of the Department of Defense.~~the Deputy Chief Management Officer of the Department of Defense, and the officials serving in positions specified in section 131(b)(4) of this title. The Principal Deputy Under Secretaries shall take precedence among themselves in the order prescribed by the Secretary of Defense.

§ 138. Assistant Secretaries of Defense

(a) ***

(d) The Assistant Secretaries take precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, the Secretaries of the military departments, the Under Secretaries of Defense, the Deputy Chief Management Officer of the Department of Defense, the officials serving in positions specified in section 131(b)(4) of this title, and the Principal Deputy Under Secretaries of Defense. The Assistant Secretaries take precedence among themselves in the order prescribed by the Secretary of Defense.

Section 902: On January 6, 2011, the President approved the Secretary of Defense's recommendation to disestablish the United States Joint Forces Command (USJFC) in an effort to operate more efficiently and effectively. Upon disestablishment of the USJFC, its role to promote joint training, develop joint doctrine and concepts, and share lessons learned that are supported by modeling, simulation, and experimentation was transferred to the Chairman of the Joint Chiefs of Staff (CJCS).

Thus, this authorization proposal would accurately codify the responsibility of the CJCS by amending section 153 of title10, United States Code to reflect the current joint force development functions that are overseen by the CJCS.

Changes to Existing Law: Section 902 would make the following changes to section 153 of title 10, United States Code:

TITLE 10 - ARMED FORCES
Subtitle A - General Military Law
PART I - ORGANIZATION AND GENERAL MILITARY POWERS
CHAPTER 5 - JOINT CHIEFS OF STAFF

§ 153. Chairman: functions

(a) PLANNING; ADVICE; POLICY FORMULATION.—Subject to the authority, direction, and control of the President and the Secretary of Defense, the Chairman of the Joint Chiefs of Staff shall be responsible for the following:

* * * * * * * * * * * * * * * * *

(5) ~~DOCTRINE, TRAINING, AND EDUCATION~~ JOINT FORCE DEVELOPMENT ACTIVITIES.—(A) Developing doctrine for the joint employment of the armed forces.

(B) Formulating policies and technical standards, and executing actions for the joint training of the armed forces.

(C) Formulating policies for coordinating the military education ~~and training~~ of members of the armed forces.

(D) Formulating policies for concept development and experimentation for the joint employment of the armed forces.

(E) Formulating policies for gathering, developing, and disseminating joint lessons learned for the armed forces.

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Section 903 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) (1) by deleting the requirement that the Secretary of Defense designate a single office within the Defense Intelligence Agency (DIA) to be responsible for the management and supervision of all commercial activities authorized by the intelligence commercial activity (ICA) statute (10 U.S.C. §§431-437); and (2) by changing the annual audit requirement to a biennial audit requirement. The proposal also would insert a definition of "congressional intelligence committees" for purposes of 10 U.S.C. §437.

Subsection (a) would change the annual audit requirement from annual to biennial. Annual audits are expensive and burdensome. No audit has found any unlawful or improper use or disposition of funds generated by any commercial activity authorized by the ICA statute. Biennial audits would occur with sufficient frequency to ensure the continued lawful and proper use and disposition of such funds.

Subsection (b) would delete the requirement that the Secretary of Defense designate a single office within the DIA to be responsible for the management and supervision of all commercial activities authorized by the ICA statute. The current statute was enacted before Congress established the position of Under Secretary of Defense for Intelligence (USD(I) to "perform such duties and exercise such powers as the Secretary of Defense may prescribe in the area of intelligence." The Secretary of Defense has directed that the USD(I) oversee all commercial activities authorized by the ICA statute. The USD(I) currently carries out this responsibility, in part, through the Director, DIA. The proposed change would give the Secretary of Defense the discretion to designate any office within the Department of Defense, including the Office of the USD(I), to oversee, directly or through an intermediary, all commercial activities authorized by the ICA statute as the Secretary of Defense deems appropriate.

Subsection (c) would make technical amendments to section 437 of title 10 to clarify that the definition of "congressional intelligence committees" under section 3 of the National Security Act of 1947 applies throughout section 437.

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: There is no cost implication associated with this proposal. 10 U.S.C. 432 provides that funds generated by ICAs may be used to offset necessary and reasonable expenses arising from that activity, with excess funds to be deposited in the Treasury as miscellaneous receipts.

RESOURCE REQUIREMENTS ($MILLIONS)								
FY	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
Amount	0.0	0.0	0.0	0.0	0.0	Operation & Maintenance, Defense-Wide	Various	Various

Changes to Existing Law: Section 903 would make the following changes to 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, 2015.

(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.

* * * * * * *

§ 432. Use, disposition, and auditing of funds

(a) USE OF FUNDS.—Funds generated by a commercial activity authorized pursuant to this subchapter may be used to offset necessary and reasonable expenses arising from that activity. Use of such funds for that purpose shall be kept to the minimum necessary to conduct the activity concerned in a secure manner. Any funds generated by the activity in excess of those required for that purpose shall be deposited, as often as may be practicable, into the Treasury as miscellaneous receipts.

(b) AUDITS.—(1) The Secretary of Defense shall assign an organization within the Department of Defense to have auditing responsibility with respect to activities authorized under this subchapter.

(2) That organization shall audit the use and disposition of funds generated by any commercial activity authorized under this subchapter not less often than ~~annually~~ biennially. The results of all such audits shall be promptly reported to the congressional intelligence committees (as defined in section 437~~(d)~~(c) of this title).

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§ **436. Regulations**

The Secretary of Defense shall prescribe regulations to implement the authority provided in this subchapter. Such regulations shall be consistent with this subchapter and shall at a minimum—

(1) specify all elements of the Department of Defense who are authorized to engage in commercial activities pursuant to this subchapter;

(2) require the personal approval of the Secretary or Deputy Secretary of Defense for all sensitive activities to be authorized pursuant to this subchapter;

(3) specify all officials who are authorized to grant waivers of laws or regulations pursuant to section 433(b) of this title, or to approve the establishment or conduct of commercial activities pursuant to this subchapter;

(4) designate a single office within the ~~Defense Intelligence Agency~~ Department of Defense to be responsible for the ~~management and supervision~~ oversight of all activities authorized under this subchapter;

(5) require that each commercial activity proposed to be authorized under this

subchapter be subject to appropriate legal review before the activity is authorized; and

(6) provide for appropriate internal audit controls and oversight for such activities.

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§ **437. Congressional oversight**

(a) PROPOSED REGULATIONS.—Copies of regulations proposed to be prescribed under section 436 of this title (including any proposed revision to such regulations) shall be submitted to the congressional intelligence committees not less than 30 days before they take effect.

(b) CURRENT INFORMATION.—Consistent with title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), the Secretary of Defense shall ensure that the congressional intelligence committees are kept fully and currently informed of actions taken pursuant to this subchapter, including any significant anticipated activity to be authorized pursuant to this subchapter.

(c) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term "congressional intelligence committees" has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

Section 904: In support of the Secretary of Defense's Efficiency Initiatives, the Department of Defense is recommending a realignment of agency responsibility for supporting the Ocean Research Advisory Panel (ORAP) by transferring responsibility for administration of that Panel from the Department of the Navy to the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce. The Administration believes that this change is consistent with the function of this advisory board.

The Administration believes that the support responsibilities of ORAP are more appropriately aligned under NOAA. This change would not affect or diminish the statutory authorities of the National Ocean Research Leadership Council (NORLC) or the National Oceanographic Partnership Program (NOPP), or their respective relationships with the ORAP. The changes made by this section would allow the functions of the ORAP to be aligned more appropriately to address the full range of ocean, coastal, and Great Lakes policy issues as they relate to the expanded Administrative responsibilities directed by the President in Executive Order 13547, "Stewardship of the Ocean, Our Coasts, and the Great Lakes."

Budget Implications: Transferring the functions of these committees to other organizations or other advisory boards would result in the following potential savings.

RESOURCE REQUIREMENTS ($MILLIONS)

	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	Appropriations From	Budget Activity	Dash-1 Line Item	Program Element
Ocean Research	.2	.2	.2	.2	.2	Research, Development, Test & Evaluation, Navy	02	0602435N	0602435N
Ocean Research Efficiency	-.2	-.2	-.2	-.2	.2	Research, Development, Test & Evaluation, Navy	02	0602435N	0602435N
Total	0.0	0.0	0.0	0.0	0.0	--	--	--	--

Changes to Existing Law: Section 904 would make the following changes to existing law:

TITLE 10, UNITED STATES CODE

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CHAPTER 665—NATIONAL OCEANOGRAPHIC PARTNERSHIP PROGRAM

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§ 7903. Ocean Research Advisory Panel

(a) ESTABLISHMENT.—The Council, through the Administrator of the National Oceanic and Atmospheric Administration, shall establish an Ocean Research Advisory Panel. The Panel shall consist~~ing~~ of not less than 10 and not more than 18 members appointed by the ~~chairman~~ Administrator of the National Oceanic and Atmospheric Administration, on behalf of the Council, including the following:

(1) One member who will represent the ~~National Academy of Sciences~~ National Academies.

~~(2) One member who will represent the National Academy of Engineering.~~

~~(3) One member who will represent the Institute of Medicine.~~

(4~~2~~) Members selected from among individuals who will represent the views of ocean industries, State governments, academia, and such other views as the Council considers appropriate.

(5~~3~~) Members selected from among individuals eminent in the fields of marine science or marine policy, or related fields.

(b) RESPONSIBILITIES.—The Council, through the Administrator of the National Oceanic and Atmospheric Administration, shall assign the following responsibilities to the Advisory Panel:

(1) To advise the Council on policies and procedures to implement the National Oceanographic Partnership Program.

(2) To advise the Council on ~~selection of partnership projects and allocation of funds for partnership projects for implementation under the program~~ the determination of scientific priorities and needs.

(3) To provide the Council strategic advice regarding national ocean program execution and collaboration.

(~~3~~4) To advise the Council on matters relating to national oceanographic data requirements.

(~~4~~5) Any additional responsibilities that the Council considers appropriate.

(c) FUNDING.— The Secretary of Commerce ~~Secretary of the Navy~~ annually shall make funds available to support the activities of the Advisory Panel.

Section 905 requests a change to the statutory reference in section 194(f) of title 10, United States Code (U.S.C.), to reflect the reissuance of DoD Directive 5100.73 as DoD Instruction 5100.73 and removal of the direction in that subsection on the use of the January 7, 1985 version of the issuance. Without this change, the Department could be obligated to use the outdated version explicitly cited in U.S.C. Moreover, the issuance from January 7, 1985 does not reflect the current organization and applicable sub-elements within the Department, including those created since 1985 (Defense Contract Management Agency, Defense Finance and Accounting Service, Defense Commissary Agency, Department of Defense Education Activity, U.S. Northern Command, U.S. Africa Command, and U.S. Cyber Command) or those eliminated since 1985 (U.S. Joint Forces Command and Business Transformation Agency).

Additionally, updating the reference to the issuances would allow the Department to address various statutory changes to the tracking and accounting of the workforce supporting the Defense Agencies and DoD Field Activities. Recent National Defense Authorization Act (NDAA) provisions that affect section 194 of title 10, U.S.C., include: section 901 of the 2008 NDAA, section 1111 of the 2009 NDAA, and section 1109 of the 2010 NDAA. The specific statutory reference to the 1985 issuance precludes the use of an updated issuance to address these changes.

Budget Implications: Updating the reference will entail no additional resources. This is an update to a statutory reference to a policy document.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY	**FY**	**FY**	**FY**	**FY**	**Appropriation**	**Budget**	**Dash-1**	**Program**

	2014	2015	2016	2017	2018	From	Activity	Line Item	Element
Defense Agencies and DoD Field Activities	0	0	0	0	0	Various	Various	Various	Various

Changes to Existing Law: Section 905 would make the following changes to existing law:

TITLE 10, UNITED STATES CODE

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CHAPTER 8 — DEFENSE AGENCIES AND DEPARTMENT OF DEFENSE FIELD ACTIVITIES

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§ 194. Limitations on personnel

(a) CAP ON HEADQUARTERS MANAGEMENT PERSONNEL.—The total number of members of the armed forces and civilian employees assigned or detailed to permanent duty in the management headquarters activities or management headquarters support activities in the Defense Agencies and Department of Defense Field Activities may not exceed the number that is the number of such members and employees assigned or detailed to such duty on September 30, 1989.

(b) CAP ON OTHER PERSONNEL.—The total number of members of the armed forces and civilian employees assigned or detailed to permanent duty in the Defense Agencies and Department of Defense Field Activities, other than members and employees assigned to management headquarters activities or management headquarters support activities, may not exceed the number that is the number of such members and employees assigned or detailed to such duty on September 30, 1989.

(c) PROHIBITION AGAINST CERTAIN ACTIONS TO EXCEED LIMITATIONS.—The limitations in subsections (a) and (b) may not be exceeded by recategorizing or redefining duties, functions, offices, or organizations.

(d) EXCLUSION OF NSA.—The National Security Agency shall be excluded in computing and maintaining the limitations required by this section.

(e) WAIVER.—The limitations in this section do not apply—

(1) in time of war; or

(2) during a national emergency declared by the President or Congress.

(f) DEFINITIONS.—In this section, the terms ‘‘management headquarters activities’’ and ‘‘management headquarters support activities’’ have the meanings given those terms in Department of Defense ~~Directive 5100.73, entitled ‘‘Department of Defense Management Headquarters and Headquarters Support Activities’’ and dated January 7, 1985.~~ Instruction 5100.73, entitled “Major DoD Headquarters Activities”.

TITLE X—GENERAL PROVISIONS

Subtitle A—Financial Matters

Subtitle B—Naval Vessels

Section 1011 would repeal section 1012 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008, as amended, requiring any new class of major surface combatant and amphibious assault ships to have an integrated nuclear power system unless the Secretary of the Navy notifies the congressional defense committees that, as a result of a cost-benefit analysis, it would not be practical for the Navy to design the class of ships with an integrated nuclear power system.. An Analysis of Alternatives (AoA) is conducted for all such vessels complete to determine the ship characteristics, including the required propulsion and power generation mechanism. The AoA outcome for each surface combatant and amphibious assault ship should be based on an independent and objective systems engineering and business case analysis, rather than a statutory dictate (unless justified otherwise) to incorporate an integrated nuclear power system in every case. Given the current and future budget environment, it is critical that the AoA has all necessary flexibilities in order to achieve the right balance between ship performance and the cost of acquiring and maintaining that future ship.

Changes to Existing Law: Section 1011 would repeal section 1012 of the NDAA for FY 2008, as amended by section 1015 of the NDAA for FY 2009 and section 1013 of the NDAA for FY 2013.

~~SEC. 1012. POLICY RELATING TO MAJOR COMBATANT VESSELS OF THE STRIKE FORCES OF THE UNITED STATES NAVY.~~

~~(a) INTEGRATED NUCLEAR POWER SYSTEMS.—It is the policy of the United States to construct the major combatant vessels of the strike forces of the United States Navy, including all new classes of such vessels, with integrated nuclear power systems.~~

~~(b) REQUIREMENT TO REQUEST NUCLEAR VESSELS.—If a request is submitted to Congress in the budget for a fiscal year for construction of a new class of major combatant vessel~~

~~for the strike forces of the United States, the request shall be for such a vessel with an integrated nuclear power system, unless the Secretary of the Navy notifies the congressional defense committees that, as a result of a cost-benefit analysis, it would not be practical for the Navy to design the class of ships with an integrated nuclear power system.~~

~~(c) DEFINITIONS.—In this section:~~

~~(1) MAJOR COMBATANT VESSELS OF THE STRIKE FORCES OF THE UNITED STATES NAVY.—The term "major combatant vessels of the strike forces of the United States Navy" means the following:~~

~~(A) Submarines.~~

~~(B) Aircraft carriers.~~

~~(C) Cruisers, battleships, or other large surface combatants whose primary mission includes protection of carrier strike groups, expeditionary strike groups, and vessels comprising a sea base.~~

~~(D) Amphibious assault ships, including dock landing ships (LSD), amphibious transport dock ships (LPD), helicopter assault ships (LHA/LHD), and amphibious command ships (LCC), if such vessels exceed 15,000 dead weight ton light ship displacement.~~

~~(2) INTEGRATED NUCLEAR POWER SYSTEM.—The term "integrated nuclear power system" means a ship engineering system that uses a naval nuclear reactor as its energy source and generates sufficient electric energy to provide power to the ship's electrical loads, including its combat systems and propulsion motors.~~

~~(3) BUDGET.—The term "budget" means the budget that is submitted to Congress by the President under section 1105(a) of title 31, United States Code.~~

Section 1012 would repeal section 125 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010. Section 125(a) prohibits obligation or expenditure of funds for construction of, or advance procurement of materials for, naval surface combatants to be constructed after FY 2011 until the Secretary of the Navy has provided specific reports to Congress. The Secretary of the Navy Report to Congress of February 2010 provided the Department of the Navy's implementation plan to complete all section 125(a) reports.

The Secretary of the Navy has completed the section 125 reporting requirements for all surface combatants up through acquisition of DDG 114 – 116, and further reporting would be redundant. Repealing continued reporting for future surface combatants under section 125 would avoid further reporting costs beyond the cost incurred to date which exceed approximately $50K annually.

Changes to Existing Law: Section 1012 would repeal section 125 of the NDAA for FY 2010.

~~SEC. 125. PROCUREMENT PROGRAMS FOR FUTURE NAVAL SURFACE COMBATANTS.~~

(a) LIMITATION ON AVAILABILITY OF FUNDS PENDING REPORTS ABOUT SURFACE COMBATANT SHIPBUILDING PROGRAMS.--The Secretary of the Navy may not obligate or expend funds for the construction of, or advanced procurement of materials for, a surface combatant to be constructed after fiscal year 2011 until the Secretary has submitted to Congress each of the following:

(1) An acquisition strategy for such surface combatants that has been approved by the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(2) Certification that the Joint Requirements Oversight Council--

(A) has been briefed on the acquisition strategy to procure such surface combatants; and

(B) has concurred that such strategy is the best preferred approach to deliver required capabilities to address future threats, as reflected in the latest assessment by the defense intelligence community.

(3) A verification by, and conclusions of, an independent review panel that, in evaluating the program or programs concerned, the Secretary of the Navy considered each of the following:

(A) Modeling and simulation, including war gaming conclusions regarding combat effectiveness for the selected ship platforms as compared to other reasonable alternative approaches.

(B) Assessments of platform operational availability.

(C) Life cycle costs, including vessel manning levels, to accomplish missions.

(D) The differences in cost and schedule arising from the need to accommodate new sensors and weapons in surface combatants to be constructed after fiscal year 2011 to counter the future threats referred to in paragraph (2), when compared with the cost and schedule arising from the need to accommodate sensors and weapons on surface combatants as contemplated by the 2009 shipbuilding plan for the vessels concerned.

(4) The conclusions of a joint review by the Secretary of the Navy and the Director of the Missile Defense Agency setting forth additional requirements for investment in Aegis ballistic missile defense beyond the number of DDG-51 and CG-47 vessels planned to be equipped for this mission area in the budget of the President for fiscal year 2010 (as submitted to Congress pursuant to section 1105 of title 31, United States Code).

(b) FUTURE SURFACE COMBATANT ACQUISITION STRATEGY.--Not later than the date upon which the President submits to Congress the budget for fiscal year 2012 (as so submitted), the Secretary of the Navy shall submit to the congressional defense committees an update to the open architecture report to Congress that reflects the Navy's combat systems acquisition plans for the surface combatants to be procured in fiscal year 2012 and fiscal years thereafter.

(c) NAVAL SURFACE FIRE SUPPORT.--Not later than 120 days after the enactment of this Act, the Secretary of the Navy shall submit to the congressional defense committees an update to the March 2006 Report to Congress on Naval Surface Fire Support. The update shall identify how the Department of Defense intends to address any shortfalls between required naval surface fire support capability and the plan of the Navy to provide that capability. The update shall include addenda by the Chief of Naval Operations and Commandant of the Marine Corps, as was the case in the 2006 report.

(d) TECHNOLOGY ROADMAP FOR FUTURE SURFACE COMBATANTS AND FLEET MODERNIZATION—

(1) IN GENERAL.--Not later than 120 days after the date of the enactment of this Act, the Secretary of the Navy shall develop a plan to incorporate into surface combatants constructed after 2011, and into fleet modernization programs, the technologies developed for the DDG-1000 destroyer and the DDG-51 and CG-47 Aegis ships, including technologies and systems designed to achieve significant manpower savings.

(2) Scope of plan.--The plan required by paragraph (1) shall include sufficient detail for systems and subsystems to ensure that the plan--

(A) avoids redundant development for common functions;

(B) reflects implementation of Navy plans for achieving an open architecture for all naval surface combat systems; and

(C) fosters competition.

(e) DEFINITIONS. In this section:

(1) The term ``2009 shipbuilding plan'' means the 30-year shipbuilding plan submitted to Congress pursuant to section 231, title 10, United States Code, together with the budget of the President for fiscal year 2009 (as submitted to Congress pursuant to section 1105 of title 31, United States Code).

(2) The term ``surface combatant'' means a cruiser, a destroyer, or any naval vessel, excluding Littoral Combat Ships, under a program currently designated as a future surface combatant program.

Subtitle C—Counter-Drug Activities

Section 1021 would extend through calendar year 2016 the authorities provided in the Ronald W. Reagan National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2005, as amended, that allow the Department of Defense (DoD) to support a unified campaign against narcotics trafficking and activities by organizations designated as terrorist organizations. It also would extend the ceiling ("cap") on U.S. military personnel and contractors in Colombia for the same period. These important authorities provide DoD the flexibility to use funds appropriated for counter-narcotics activities to support Colombian efforts against terrorist organizations involved in narcotics production and trafficking activities. This section provides clear, unambiguous authority for DoD to provide support to the Government of Colombia as it

continues to make progress against narco-terrorist organizations. The Revolutionary Armed Forces of Colombia (FARC) is designated a Foreign Terrorist Organization that uses the lucrative drug trade to raise funds for its terrorist activities. Although the FARC's numbers are down from a high of 18,000 to their current level of approximately 9,000, a sustained effort is needed to ensure that the FARC is not able to reconstitute itself. The National Strategy for Counterterrorism, released in June 2011, states that the FARC continues to "pose significant threats to U.S. strategic interests as regional destabilizers and as threats to our citizens, facilities, and allies worldwide."

Section 1021 of the NDAA for FY 2005 provides that funds available to the DoD to provide assistance to the Government of Colombia may be used to "support a unified campaign by the Government of Colombia against narcotics trafficking and against activities by organizations designated as terrorist organizations, such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN) and the United Self-Defense Forces of Colombia (AUC)" in fiscal years 2005 and 2006. Section 1023 of the John Warner NDAA for FY 2007 and section 1023 of the Duncan Hunter NDAA for FY 2009 extended this authority through FY 2009. Section 1011 of the NDAA for FY 2010 extended this authority through FY 2010, section 1011 of the Ike Skelton NDAA for FY 2011 extended this authority through FY 2011, section 1007 of the NDAA for FY 2012 extended this authority through FY 2012, and section 1010 of the NDAA for FY 2013 extended this authority through FY 2013.

Extending these authorities would provide the U.S. Southern Command with continued flexibility to support operations in Colombia while adhering to other applicable constraints (e.g., not allowing U.S. military personnel to participate in Colombian military combat operations). The number of U.S. military personnel and contractors assigned for temporary or permanent duty in Colombia in support of Colombia has never reached 800. During FY 2005, the first year of implementation, the number of military personnel in Colombia never exceeded 538, and since then, the number has declined, most recently averaging approximately 300 U.S. military personnel in Colombia at any one time.

Budget Implications: The proposal would extend the authority to use already appropriated counter-narcotics funds to combat terrorist organizations that are inextricably tied to illicit drug trafficking. Total direct support funding for Colombia in FY 2014 is $31.4 million, in FY 2015 it is $36.2 million, and in FY 2016 it is $37.5 million, which directly affects the authority contained in section 1021. Funding includes support to the United States' Colombia Strategic Development Initiative (CSDI). U.S. Southern Command will use these funds to assist the Government of Colombia to build the capabilities of its ten Joint Task Forces as outlined in the Colombian Counterinsurgency Strategy (Spanish Acronym CRE). Additionally, this funding provides a variety of logistical and operational support activities that directly support Colombia in its internal conflict with the FARC, and by extension, support of the U.S. Government's interests to stem the flow of illicit drugs to the United States.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriations From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Amount	$31.4	$36.2	$37.5	$36.5	$31.2	Drug Interdiction and Counterdrug Activities, Defense	01	• 105D	• 0208889D

Changes to Existing Law: Section 1021 would make the following changes to section 1021 of the Ronald W. Reagan NDAA for FY 2005 (Public Law 108-375; 118 Stat. 2042), as amended by section 1023 of the John Warner NDAA for FY 2007 (Public Law 109–364; 120 Stat. 2382), section 1023 of the Duncan Hunter NDAA for FY 2009 (Public Law 110-417; 122 Stat. 4586), section 1011 of the NDAA for FY 2010 (Public Law 111-84; 123 Stat. 2190), section 1011 of the Ike Skelton NDAA for FY 2011 (Public Law 111-383; 124 Stat. 4346), section 1007 of the NDAA for FY 2012 (Public Law 112-81; 125 Stat. 1558), and section 1010 of the NDAA for FY 2013 (Public Law 112-239):

SEC. 1021. USE OF FUNDS FOR UNIFIED COUNTERDRUG AND COUNTERTERRORISM CAMPAIGN IN COLOMBIA.

(a) AUTHORITY.—(1) ~~In fiscal years 2005 through 2013~~ During the period ending on December 31, 2016, funds available to the Department of Defense to provide assistance to the Government of Colombia may be used by the Secretary of Defense to support a unified campaign by the Government of Colombia against narcotics trafficking and against activities by organizations designated as terrorist organizations, such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC).

(2) The authority to provide assistance for a campaign under this subsection includes authority to take actions to protect human health and welfare in emergency circumstances, including the undertaking of rescue operations.

(b) APPLICABILITY OF CERTAIN LAWS AND LIMITATIONS.—The use of funds pursuant to the authority in subsection (a) shall be subject to the following:

(1) Sections 556, 567, and 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115; 115 Stat. 2160, 2165, and 2166).

(2) Section 8076 of the Department of Defense Appropriations Act, 2005 (Public Law 108–287; 118 Stat. 988).

(c) NUMERICAL LIMITATION ON ASSIGNMENT OF UNITED STATES PERSONNEL.—Notwithstanding section 3204(b) of the Emergency Supplemental Act, 2000 (Division B of Public Law 106–246; 114 Stat. 575), as amended by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115; 115 Stat. 2131), the number of United States personnel assigned to conduct activities in Colombia in connection with

support of Plan Colombia under subsection (a) ~~in fiscal years 2005 through 2013~~ during the period ending on December 31, 2016, shall be subject to the following limitations:

(1) The number of United States military personnel assigned for temporary or permanent duty in Colombia in connection with support of Plan Colombia may not exceed 800.

(2) The number of United States individual citizens retained as contractors in Colombia in connection with support of Plan Colombia who are funded by Federal funds may not exceed 600.

(d) LIMITATION ON PARTICIPATION OF UNITED STATES PERSONNEL.—No United States Armed Forces personnel, United States civilian employees, or United States civilian contractor personnel employed by the United States may participate in any combat operation in connection with assistance using funds pursuant to the authority in subsection (a), except for the purpose of acting in self defense or of rescuing any United States citizen, including any United States Armed Forces personnel, United States civilian employee, or civilian contractor employed by the United States.

(e) RELATION TO OTHER AUTHORITY.—The authority provided by subsection (a) is in addition to any other authority in law to provide assistance to the Government of Colombia.

(f) REPORT ON RELATIONSHIPS BETWEEN TERRORIST ORGANIZATIONS IN COLOMBIA AND FOREIGN GOVERNMENTS AND ORGANIZATIONS.—(1) Not later than 60 days after the date of the enactment of this Act, the Secretary of State, in consultation with the Secretary of Defense and the Director of Central Intelligence, shall submit to the congressional defense committees and the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a report that describes—

(A) any relationships between foreign governments or organizations and organizations based in Colombia that have been designated as foreign terrorist organizations under United States law, including the provision of any direct or indirect assistance to such organizations; and

(B) United States policies that are designed to address such relationships.

(2) The report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

Subtitle D—Other Matters

Section 1031 would provide the Secretary of Defense with the same general powers and authorities currently provided to the Secretary of Homeland Security in section 1315 of title 40, United States Code, which would allow the Secretary of Defense to establish regulations that are enforceable by criminal penalties.

The proposal would add new section 2672 to chapter 159 of title 10, United States Code (U.S.C.). Subsection (a) of section 2672 would provide that the Secretary shall protect the property under the jurisdiction, custody, or control of the Department of Defense (DoD).

Subsection (b) would provide that the Secretary may appoint civilian or military personnel of the DoD to perform the functions of the Secretary under subsection (a). Such functions, when off an installation, could only be performed by civilian law enforcement agents. It would provide rules governing how the Secretary would designate such officers and agents. It also would provide that the appointed personnel will have the general powers of law enforcement agents.

Subsection (c) would provide that the Secretary may prescribe regulations providing for the administration and protection of the property and persons and that such regulations may include penalties as provided in title 18, United States Code.

Subsection (d) would limit the exercise of the authority to designate personnel and establish regulations subject to criminal penalties to the Secretary and Deputy Secretary of Defense.

Subsection (e) would prohibit any person arrested under this section and not subject to the Uniform Code of Military Justice from being held in a military confinement facility (a stockade or brig).

Subsection (f) would provide that the Secretary may, with their consent, utilize the facilities and services of other Federal and State, tribal, and local law enforcement agencies and reimburse them for the use of such facilities and services.

Subsection (g) would provide that the Secretary may enter into agreements with other Federal agencies and State, tribal, and local governments to allow DoD civilian personnel to enforce the laws of those entities, i.e., to be deputized.

Subsection (h) would provide that the powers of the officers and agents appointed by the Secretary will be exercised in accordance with guidelines approved by the Attorney General.

Subsection (i) would provide that the section will not conflict with the existing authorities of other Federal law enforcement organizations, the authority of the Secretary of Homeland Security or of the Administrator of General Services with regard to property under the Secretary's or the Administrator's jurisdiction, section 21 of the Internal Security Act of 1950, the Uniform Code of Military Justice, or other authority of the Secretary of Defense or of a military department.

In 2002, Congress amended section 1315 of title 40, U.S.C. (in section 1706(b) of the Homeland Security Act of 2002 (Pub. L. 107-296)) to transfer the responsibility for protecting Federal property from the Administrator of General Services to the Secretary of Homeland

Security. Previously, section 1315 only applied to property under the jurisdiction of the Administrator, which, by definition, did not include DoD property.

That distinction was eliminated in 2002 and the Secretary of Homeland Security was given responsibility for all Federal property, regardless of administrative jurisdiction. The Department of Homeland Security (DHS) has not exercised this authority on DoD installations, nor has it any intention of doing so. It views protection of DoD property as DoD's responsibility, and DHS is not funded to provide such a massive level of support to DoD. Nor does there appear to be any desire within DoD to turn over law enforcement on its installations to DHS.

When section 1315 was amended, a special provision that gave criminal effect to DoD traffic regulations was eliminated. The changes to section 1315 do not appear to have intended the consequences they have created.

Correcting the legal underpinning of DoD's traffic regulations is but one element of a broader gap in DoD law enforcement authority (the current memorandum of understanding with DHS probably cannot be fixed to solve this problem because the underlying authority for it was removed from section 1315). As a specific example, a current major issue centers on our lack of jurisdiction over a growing population of non-DoD-affiliated civilians living in privatized housing on our installations. Traditionally, this lack of jurisdiction would be covered by support from local civilian law enforcement or, in the case of exclusive jurisdiction property, Federal law enforcement officers (e.g., the Marshal's Service or the Federal Bureau of Investigation). In today's climate of constrained resources, the norm has become a lack of support from civilian law enforcement agencies, as they are tied up with their own jurisdiction and missions and do not or cannot respond to DoD's need for support. Without the ability to create regulations with criminal penalties, this leaves DoD with the option to bar a non-DoD-affiliated civilian tenant from the installation (an eviction), but leaves the criminal act that caused that bar unaddressed. This proposal would correct that deficiency.

Other jurisdictional issues include installations in remote areas with no close adjoining civilian law enforcement agency; DoD-leased facilities off of DoD installations; and enforcement of federal and state conservation laws on DoD installations. Problems have surfaced where DoD's lack of law enforcement authority has caused DoD civilian law enforcement personnel to seek deputization from outside agencies (e.g., local law enforcement agencies, Federal Marshals Service). DoD law enforcement organizations should not have to "shop" from non-DoD agencies for enforcement authority necessary to carry out their required duties. This proposal would allow the Secretary of Defense to confer the appropriate authorities on DoD law enforcement agencies for the performance of their mission.

This proposal does not affect how offenses against the United States would be prosecuted. Prosecutions would continue to be performed by the United States Attorney's Office, or, for those installations having a Federal Magistrates Program, in U.S. Magistrate's

Court on the installation and by DoD attorneys designated for this purpose as Special Assistant United States Attorneys by the local United States Attorney.

In summary, this proposed legislation would correct two major defects: the current lack of statutory authority to promulgate regulations enforceable with criminal penalties on DoD installations, and the need for explicit law enforcement authority. This lack of authority is not an anticipated problem; it currently exists. The security of DoD installations is at risk due to the lack of proper statutory law enforcement authority. It is long overdue for DoD to have explicit authority to enforce the laws on DoD installations.

Similar authority has already been conferred on the Secretary of Defense with regard to the Pentagon Reservation and facilities in the National Capital Region by section 2674 of title 10, U.S.C. This new authority would not apply in those locations currently under the protection of the Federal Protective Service, e.g., office buildings provided by the General Services Administration in which DoD organizations are tenants.

Budget Implications: This proposal has no discernible budget implications. The law enforcement authorities this proposal would provide do not, in themselves, generate any additional costs. Implementation of the proposal would involve sunk costs; existing organizations and personnel. There are no significant additional costs in training due to this change. Any training curriculum/text changes would be accomplished as part of the normal training development process. There are no 'special training/certifications' involved with the implementation of this proposal.

RESOURCE REQUIREMENTS ($THOUSANDS)									
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Army	$5	$5	$5	$5	$5	Operation & Maintenance, Army	BA 01	131	131039400
Navy	$5	$5	$5	$5	$5	Operation & Maintenance, Navy	BA 01	BSS1	0208538N
Air Force	$5	$5	$5	$5	$5	Operation & Maintenance, Air Force	BA 01	011Z	28538F
Marine Corps	$5	$5	$5	$5	$5	Operation & Maintenance, Marine Corps	BA 01	BSS1	000090

Changes to Existing Law: Section 1031 would amend chapter 159 of title 10, United States Code, by inserting a new section 2672, shown in full in the legislative text.

Section 1032 will confirm that nothing in the Military Commissions Act precludes the use of the familiar jury selection process of designating primary and alternate members.

The proposed changes will clarify the law for detailing members to a military commission. As it is now, the statute could be interpreted to require an unusually large and unwieldy panel of members and subject legitimate means of detailing members to military commissions to legal challenges. The proposed legislation will clarify the law without diminishing the rights of the accused as provided in the Military Commissions Act of 2009.

The Convening Authority will clearly have the authority to detail and designate commission members as primaries and alternates and to implement a mechanism whereby a detailed alternate member automatically becomes a primary member when a commission is reduced below the statutorily required number of members. The proposal will also clarify that it is not inappropriate to detail a specified number of alternate members to observe all evidence in the event a primary member is excused after the trial begins.

Some have argued that the MCA precludes the use of the familiar process of designating primary and alternate members. Due to the notoriety of some of the cases that may be tried before a military commission, and to ensure the required amount of members are present after challenges, the Convening Authority must detail a considerable number of members to a commission. In the event a significant number of members from a large panel remain after challenges, this proposal will ensure that the statutorily required number of members are present, and allow for the presence of some alternate members to remain, while those not required are dismissed and able to return to their regular duties but subject to being recalled on short notice should additional alternate members be required during the proceedings.

This proposal also would allow a military judge to grant additional peremptory challenges if he determines it to be in the best interest of justice to do so. All other rights afforded to an accused under the Military Commissions Act of 2009 remain unaffected.

§948m(a) – This provision will clearly establish that a convening authority has the authority to detail both primary and alternate members to a military commission.

§948m(b) – This provision defines a primary member.

§948m(c) – The proposed changes to this section clarify that the use of alternate members is permissible. It establishes that members may be detailed to a military commission as either primary or alternate members, with alternate members replacing those primary members that are excused in accordance with §948m(c).

§948m(d) – The changes to this provision establish that after the assembly of a military commission, primary and alternate members are treated the same regarding their excusal from a commission. The proposed language promotes the efficient use of members by clarifying the convening authority's ability to excuse additional alternate members. This will prevent a military commission with more alternates than is reasonably necessary.

§948m(e) – The proposed changes in this provision clarify that additional members are not required to be detailed to a commission unless there are no remaining alternate members. It also creates efficiency by clarifying that when an alternate member becomes a primary member, it is not necessary to read to them the evidence previously introduced, provided they were present for the introduction of that evidence.

§949f (b) – The proposed change will give the military judge the discretion, in the interest of justice, to provide both parties with additional peremptory challenges. This provision allows the commission the flexibility to adjust to unusual circumstances on a case-by-case basis.

§949m(b)(4) – This provision clarifies that a member who votes on a sentence does not have to be a member who voted on guilt. The MCA does not directly address whether the members who vote on a sentence must be the same as the members who vote on guilt. This proposed clarification is consistent with military practice.

Budget Implications: This proposal will result in a savings to the U.S. Government. The proposed language will clarify the statute, making it unnecessary to transport, house, and feed the large panel that may otherwise be required at the location where military commissions are held.

Changes to Existing Law: Section 1032 would make the following changes to chapter 47A of title 10, United States Code:

CHAPTER 47A—MILITARY COMMISSIONS

****

§ 948m. Number of members; excuse of members; absent and additional members

(a) NUMBER OF MEMBERS.—(1) Except as provided in paragraph (2), a military commission under this chapter shall have at least five <u>primary</u> members <u>and as many alternate members as the convening authority shall detail</u>. Alternate members shall be designated in the order in which they will replace an excused primary member

(2) In a case in which the accused before a military commission under this chapter may be sentenced to a penalty of death, the military commission shall have the number of primary members prescribed by section 949m(c) of this title.

(b) PRIMARY MEMBERS.—Primary members of a military commission under this chapter are voting members.

(c) ALTERNATE MEMBERS.—(1) A military commission may include alternate members to replace primary members who are excused from service on the commission.

(2) Whenever a primary member is excused from service on the commission, an alternate member, if available, shall replace the excused primary member and the trial may proceed.

(~~b~~d) EXCUSE OF MEMBERS.—No primary or alternate member of a military commission under this chapter may be absent or excused after the military commission has been assembled for the trial of a case unless excused—

(1) as a result of challenge;

(2) by the military judge for physical disability or other good cause; ~~or~~

(3) by order of the convening authority for good cause; or

(4) in the case of an alternate member, in order to reduce the number of alternate members required for service on the commission as determined by the convening authority.

(~~c~~e) ABSENT AND ADDITIONAL MEMBERS.—Whenever the number of primary members of a military commission under this chapter is reduced below the number of primary members required by subsection (a) and there are no remaining alternate members to replace the excused primary members, the trial may not proceed unless the convening authority details new members sufficient to provide not less than such number. The trial may proceed with the new members present after the recorded evidence previously introduced before the members has been read to the military commission in the presence of the military judge, the accused (except as provided in section 949d of this title), and counsel for both sides. An alternate member who was present for the introduction of all evidence shall not be considered to be a new or additional member.

****

§ 949f. Challenges

(a) CHALLENGES AUTHORIZED.—The military judge and primary and alternate members of a military commission under this chapter may be challenged by the accused or trial counsel for cause stated to the military commission. The military judge shall determine the relevance and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) PEREMPTORY CHALLENGES.—The accused and trial counsel are each entitled to one peremptory challenge, but the military judge may not be challenged except for cause. Nothing in this section prohibits the military judge from awarding to each party such additional peremptory challenges as may be required in the interests of justice.

(c) CHALLENGES AGAINST ADDITIONAL MEMBERS.—Whenever additional members are detailed to a military commission under this chapter, and after any challenges for cause against such additional members are presented and decided, the accused and trial counsel are each entitled to one peremptory challenge against members not previously subject to peremptory challenge.

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§ 949m. Number of votes required

(a) CONVICTION.—No person may be convicted by a military commission under this chapter of any offense, except as provided in section 949i(b) of this title or by concurrence of two-thirds of the primary members present at the time the vote is taken.

(b) SENTENCES.—(1) Except as provided in paragraphs (2) and (3), sentences shall be determined by a military commission by the concurrence of two-thirds of the primary members present at the time the vote is taken.

(2) No person may be sentenced to death by a military commission, except insofar as—

(A) the penalty of death has been expressly authorized under this chapter, chapter 47 of this title, or the law of war for an offense of which the accused has been found guilty;

(B) trial counsel expressly sought the penalty of death by filing an appropriate notice in advance of trial;

(C) the accused was convicted of the offense by the concurrence of all the primary members present at the time the vote is taken; and

(D) all primary members present at the time the vote was taken concurred in the sentence of death.

(3) No person may be sentenced to life imprisonment, or to confinement for more than 10 years, by a military commission under this chapter except by the concurrence of three-fourths of the primary members present at the time the vote is taken.

(4) The primary members present for a vote on a sentence need not be the same primary members who voted on the conviction provided the requirements of section 948m(d) of this chapter are satisfied.

(c) NUMBER OF MEMBERS REQUIRED FOR PENALTY OF DEATH.—(1) Except as provided in paragraph (2), in a case in which the penalty of death is sought, the number of primary members of the military commission under this chapter shall be not less than 12 members.

(2) In any case described in paragraph (1) in which 12 primary members are not reasonably available for a military commission because of physical conditions or military exigencies, the convening authority shall specify a lesser number of primary members for the military commission (but not fewer than 9 primary members), and the military commission may be assembled, and the trial held, with not less than the number of primary members so specified. In any such case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of primary members were not reasonably available.

Section 1033 represents the Department's latest effort to reduce the burden of recurring reporting requirements on the Department while ensuring that the Congress continues to receive the information it requires.

This proposal would repeal the statutory requirement for the submission of various recurring reports currently required by law. These proposed repeals would allow the Department to employ its finite resources more efficiently and would improve Congress's ability to conduct effective oversight by focusing that effort on reports of substantial importance and utility.

The Department will provide in a separate document specific information regarding each reporting requirement proposed for repeal.

Budget Implications: This proposal would reduce the cost to the Department of Defense and the Department of Energy of producing recurring reports for Congress.

Changes to Existing Law: Section 1033 would amend various sections of title 10, United States Code, annual defense authorization Acts, and other laws as follows:

TITLE 10, UNITED STATES CODE

§ 113. Secretary of Defense

(a) There is a Secretary of Defense, who is the head of the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as Secretary of Defense within seven years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) ***

* * * * * * *

(k) The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall provide annually to the Secretaries of the military departments and to the commanders of the combatant commands written guidelines to direct the effective detection and monitoring of all potential aerial and maritime threats to the national security of the United States. Those guidelines shall include guidance on the specific force levels and specific

supporting resources to be made available for the period of time for which the guidelines are to be in effect.

(l) ***

~~(m) INFORMATION TO ACCOMPANY FUNDING REQUEST FOR CONTINGENCY OPERATION. - Whenever the President submits to Congress a request for appropriations for costs associated with a contingency operation that involves, or likely will involve, the deployment of more than 500 members of the armed forces, the Secretary of Defense shall submit to Congress a report on the objectives of the operation. The report shall include a discussion of the following:~~

~~(1) What clear and distinct objectives guide the activities of United States forces in the operation.~~

~~(2) What the President has identified on the basis of those objectives as the date, or the set of conditions, that defines the endpoint of the operation.~~

* * * * * * *

§ 117. Readiness reporting system: establishment; reporting to congressional committees

(a) REQUIRED READINESS REPORTING SYSTEM. - The Secretary of Defense shall establish a comprehensive readiness reporting system for the Department of Defense. The readiness reporting system shall measure in an objective, accurate, and timely manner the capability of the armed forces to carry out -

(1) the National Security Strategy prescribed by the President in the most recent annual national security strategy report under section 108 of the National Security Act of 1947 (50 U.S.C. 404a);

(2) the defense planning guidance provided by the Secretary of Defense pursuant to section 113(g) of this title; and

(3) the National Military Strategy prescribed by the Chairman of the Joint Chiefs of Staff.

(b) READINESS REPORTING SYSTEM CHARACTERISTICS. - In establishing the readiness reporting system, the Secretary shall ensure -

(1) that the readiness reporting system is applied uniformly throughout the Department of Defense;

(2) that information in the readiness reporting system is continually updated, with (A) any change in the overall readiness status of a unit that is required to be reported as part of the readiness reporting system being reported within 24 hours of the event necessitating the change in readiness status, and (B) any change in the overall readiness status of an element of the training establishment or an element of defense infrastructure that is required to be reported as part of the readiness reporting system being reported within 72 hours of the event necessitating the change in readiness status; and

(3) that sufficient resources are provided to establish and maintain the system so as to allow reporting of changes in readiness status as required by this section.

(c) CAPABILITIES. - The readiness reporting system shall measure such factors relating to readiness as the Secretary prescribes, except that the system shall include the capability to do each of the following:

(1) ***

* * * * * * *

(d) QUARTERLY AND MONTHLY JOINT READINESS REVIEWS. –

(1) The Chairman of the Joint Chiefs of Staff shall -

(A) on a quarterly basis, conduct a joint readiness review; and

(B) on a monthly basis, review any changes that have been reported in readiness since the previous joint readiness review.

(2) The Chairman shall incorporate into both the joint readiness review required under paragraph (1)(A) and the monthly review required under paragraph (1)(B) the current information derived from the readiness reporting system and shall assess the capability of the armed forces to execute their wartime missions based upon their posture at the time the review is conducted. The Chairman shall submit to the Secretary of Defense the results of each review under paragraph (1), including the deficiencies in readiness identified during that review.

~~(e) SUBMISSION TO CONGRESSIONAL COMMITTEES. - The Secretary shall each quarter submit to the congressional defense committees a report in writing containing the results of the most recent joint readiness review under subsection (d)(1)(A), including the current information derived from the readiness reporting system. Each such report shall be submitted in unclassified form and may, as the Secretary determines necessary, also be submitted in classified form.~~

(f) REGULATIONS. - ***

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§ 127. Emergency and extraordinary expenses

(a) Subject to the limitations of subsection (c), and within the limitation of appropriations made for the purpose, the Secretary of Defense, the Inspector General of the Department of Defense, and the Secretary of a military department within his department, may provide for any emergency or extraordinary expense which cannot be anticipated or classified. When it is so provided in such an appropriation, the funds may be spent on approval or authority of the Secretary concerned or the Inspector General for any purpose he determines to be proper, and such a determination is final and conclusive upon the accounting officers of the United States. The Secretary concerned or the Inspector General may certify the amount of any such expenditure authorized by him that he considers advisable not to specify, and his certificate is sufficient voucher for the expenditure of that amount.

(b) The authority conferred by this section may be delegated by the Secretary of Defense to any person in the Department of Defense, by the Inspector General to any person in the Office of the Inspector General, or by the Secretary of a military department to any person within his department, with or without the authority to make successive redelegations.

(c)(1) Funds may not be obligated or expended in an amount in excess of $500,000 under the authority of subsection (a) or (b) until the Secretary of Defense has notified the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives of the intent to obligate or expend the funds, and -

(A) in the case of an obligation or expenditure in excess of $1,000,000, 15 days have elapsed since the date of the notification; or

(B) in the case of an obligation or expenditure in excess of $500,000, but not in excess of $1,000,000, 5 days have elapsed since the date of the notification.

(2) Subparagraph (A) or (B) of paragraph (1) shall not apply to an obligation or expenditure of funds otherwise covered by such subparagraph if the Secretary of Defense determines that the national security objectives of the United States will be compromised by the application of the subparagraph to the obligation or expenditure. If the Secretary makes a determination with respect to an obligation or expenditure under the preceding sentence, the Secretary shall immediately notify the committees referred to in paragraph (1) that such obligation or expenditure is necessary and provide any relevant information (in classified form, if necessary) jointly to the chairman and ranking minority member (or their designees) of such committees.

(3) A notification under paragraph (1) and information referred to in paragraph (2) shall include the amount to be obligated or expended, as the case may be, and the purpose of the obligation or expenditure.

~~(d) Annual Report. - Not later than December 1 each year, the Secretary of Defense shall submit to the congressional defense committees a report on expenditures during the preceding fiscal year under subsections (a) and (b).~~

* * * * * *

§ 129. Prohibition of certain civilian personnel management constraints

(a) ***

* * * * * * *

~~(f)(1) Not later than February 1 of each year, the Secretary of each military department and the head of each Defense Agency shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the management of the civilian workforce under the jurisdiction of that official.~~

~~(2) Each report of an official under paragraph (1) shall contain the following:~~

~~(A) The official's certification (i) that the civilian workforce under the jurisdiction of the official is not subject to any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees, and (ii) that, during the 12 months preceding the date on which the report is due, such workforce has not been subject to any such constraint or limitation.~~

~~(B) A description of how the civilian workforce is managed.~~

~~(C) A detailed description of the analytical tools used to determine civilian workforce requirements during the 12-month period referred to in subparagraph (A).~~

* * * * * *

§ 153. Chairman: functions

(a) PLANNING; ADVICE; POLICY FORMULATION. - Subject to the authority, direction, and control of the President and the Secretary of Defense, the Chairman of the Joint Chiefs of Staff shall be responsible for the following:

(1) ***

* * * * * * *

~~(c) ANNUAL REPORT ON COMBATANT COMMAND REQUIREMENTS. –~~

~~(1) At or about the time that the budget is submitted to Congress for a fiscal year under section 1105(a) of title 31, the Chairman shall submit to the congressional defense committees a report on the requirements of the combatant commands established under section 161 of this title.~~

~~(2) Each report under paragraph (1) shall contain the following:~~

~~(A) A consolidation of the integrated priority lists of requirements of the combatant commands.~~

~~(B) The Chairman's views on the consolidated lists.~~

~~(C) A description of the extent to which the most recent future-years defense program (under section 221 of this title) addresses the requirements on the consolidated lists.~~

~~(D) A description of the funding proposed in the President's budget for the next fiscal year, and for the subsequent fiscal years covered by the most recent future-years defense program, to address each deficiency in readiness identified during the joint readiness review conducted under section 117 of this title for the first quarter of the current fiscal year.~~

(d) BIENNIAL REVIEW OF NATIONAL MILITARY STRATEGY. –

(1) ***

* * * * * * *

§223a. Ballistic missile defense programs: procurement

(a) BUDGET JUSTIFICATION MATERIALS.—In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the Secretary of Defense shall specify, for each ballistic missile defense system element for which the Missile Defense Agency is engaged in planning for production and initial fielding, the following information:

(1) The production rate capabilities of the production facilities planned to be used for production of that element.

(2) The potential date of availability of that element for initial fielding.

(3) The estimated date on which the administration of the acquisition of that element is to be transferred from the Director of the Missile Defense Agency to the Secretary of a military department.

(b) FUTURE-YEARS DEFENSE PROGRAM.—The Secretary of Defense shall include in the future-years defense program submitted to Congress each year under section 221 of this title an estimate of the amount necessary for procurement for each ballistic missile defense system element, together with a discussion of the underlying factors and reasoning justifying the estimate.

(c) PERFORMANCE CRITERIA.—The Director of the Missile Defense Agency shall include in the performance criteria prescribed for planned development phases of the ballistic missile defense system and its elements a description of the intended effectiveness of each such phase against foreign adversary capabilities.

~~(d) TESTING PROGRESS.—The Director of Operational Test and Evaluation shall make available for review by the congressional defense committees the developmental and operational test plans established to assess the effectiveness of the ballistic missile defense system and its elements with respect to the performance criteria described in subsection (c).~~

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§229. ~~Programs for combating terrorism: display of budget information~~

~~(a) SUBMISSION WITH ANNUAL BUDGET JUSTIFICATION DOCUMENTS.—The Secretary of Defense shall submit to Congress, as a part of the documentation that supports the President's annual budget for the Department of Defense, a consolidated budget justification display, in classified and unclassified form, that includes all programs and activities of the Department of Defense combating terrorism program.~~

~~(b) REQUIREMENTS FOR BUDGET DISPLAY.—The budget display under subsection (a) shall include—~~

~~(1) the amount requested, by appropriation and functional area, for each of the program elements, projects, and initiatives that support the Department of Defense combating terrorism program, with supporting narrative descriptions and rationale for the funding levels requested; and~~

~~(2) a summary, to the program element and project level of detail, of estimated expenditures for the current year, funds requested for the budget year, and budget~~

estimates through the completion of the current future-years defense plan for the Department of Defense combating terrorism program.

(c) EXPLANATION OF INCONSISTENCIES.—As part of the budget display under subsection (a) for any fiscal year, the Secretary shall identify and explain—

(1) any inconsistencies between (A) the information submitted under subsection (b) for that fiscal year, and (B) the information provided to the Director of the Office of Management and Budget in support of the annual report of the President to Congress on funding for executive branch counterterrorism and antiterrorism programs and activities for that fiscal year in accordance with section 1051(b) of the National Defense Authorization Act for Fiscal Year 1998 (31 U.S.C. 1113 note); and

(2) any inconsistencies between (A) the execution, during the previous fiscal year and the current fiscal year, of programs and activities of the Department of Defense combating terrorism program, and (B) the funding and specification for such programs and activities for those fiscal years in the manner provided by Congress (both in statutes and in relevant legislative history).

(d) SEMIANNUAL REPORTS ON OBLIGATIONS AND EXPENDITURES.—The Secretary shall submit to the congressional defense committees a semiannual report on the obligation and expenditure of funds for the Department of Defense combating terrorism program. Such reports shall be submitted not later than April 15 each year, with respect to the first half of a fiscal year, and not later than November 15 each year, with respect to the second half of a fiscal year. Each such report shall compare the amounts of those obligations and expenditures to the amounts authorized and appropriated for the Department of Defense combating terrorism program for that fiscal year, by budget activity, sub-budget activity, and program element or line item. The second report for a fiscal year shall show such information for the second half of the fiscal year and cumulatively for the whole fiscal year. The report shall be submitted in unclassified form, but may have a classified annex.

(e) DEPARTMENT OF DEFENSE COMBATING TERRORISM PROGRAM.—In this section, the term "Department of Defense combating terrorism program" means the programs, projects, and activities of the Department of Defense related to combating terrorism inside and outside the United States.

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§ 483. Reports on transfers from high-priority readiness appropriations

(a) Annual Reports.—Not later than the date on which the President submits the budget for a fiscal year to Congress pursuant to section 1105 of title 31, the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives a report on transfers during the preceding fiscal year from funds available for each covered budget activity.

(b) Midyear Reports. - Not later than June 1 of each fiscal year, the Secretary of Defense shall submit to the congressional committees specified in subsection (a) a report on transfers, during the first six months of that fiscal year, from funds available for each covered budget activity.

(c) Matters To Be Included. - In each report under subsection (a) or (b), the Secretary of Defense shall include for each covered budget activity the following:

(1) A statement, for the period covered by the report, of -

(A) the total amount of transfers into funds available for that activity;

(B) the total amount of transfers from funds available for that activity; and

(C) the net amount of transfers into, or out of, funds available for that activity.

(2) A detailed explanation of the transfers into, and out of, funds available for that activity during the period covered by the report, including identification of the sources from which funds were transferred into that activity and identification of the recipients of the funds transferred out of that activity.

(d) Covered Budget Activity Defined. - In this section, the term "covered budget activity" means each of the following:

(1) The budget activity groups (known as "subactivities") within the Operating Forces budget activity of the annual Operation and Maintenance, Army, appropriation that are designated as follows:

(A) All subactivities under the category of Land Forces.

(B) Land Forces Depot Maintenance.

(C) Base Support.

(D) Maintenance of Real Property.

(2) The Air Operations budget activity groups (known as "subactivities") within the Operating Forces budget activity of the annual Operation and Maintenance, Navy, appropriation that are designated as follows:

(A) Mission and Other Flight Operations.

(B) Fleet Air Training.

(C) Aircraft Depot Maintenance.

(D) Base Support.

(E) Maintenance of Real Property.

(3) The Ship Operations budget activity groups (known as "subactivities") within the Operating Forces budget activity of the annual Operation and Maintenance, Navy, appropriation that are designated as follows:

(A) Mission and Other Ship Operations.

(B) Ship Operational Support and Training.

(C) Ship Depot Maintenance.

(D) Base Support.

(E) Maintenance of Real Property.

(4) The Expeditionary Forces budget activity groups (known as "subactivities") within the Operating Forces budget activity of the annual Operation and Maintenance, Marine Corps, appropriation that are designated as follows:

(A) Operational Forces.

(B) Depot Maintenance.

(C) Base Support.

(D) Maintenance of Real Property.

(5) The Air Operations and Combat Related Operations budget activity groups (known as "subactivities") within the Operating Forces budget activity of the annual Operation and Maintenance, Air Force, appropriation that are designated as follows:

(A) Primary Combat Forces.

(B) Primary Combat Weapons.

(C) Air Operations Training.

(D) Depot Maintenance.

(E) Base Support.

(F) Maintenance of Real Property.

(G) Combat Enhancement Forces.

(H) Combat Communications.

(6) The Mobility Operations budget activity group (known as a "subactivity") within the Mobilization budget activity of the annual Operation and Maintenance, Air Force, appropriation that is designated as Airlift Operations.

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§489. Annual report on Department of Defense operation and financial support for military museums

(a) Report Required. — As part of the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, but in no case later than March 15 of each year, the Secretary of Defense shall submit a report identifying all military museums that, during the most recently completed fiscal year —

(1) were operated by the Secretary of Defense or the Secretary of a military department;

(2) were otherwise supported using funds appropriated to the Department of Defense; or

(3) were located on property under the jurisdiction of the Department of Defense, although neither operated by the Department of Defense nor supported using funds appropriated to the Department of Defense.

(b) Information on Individual Museums. — For each museum identified in a report under this section, the Secretary of Defense shall include in the report the following:

(1) The purpose and functions of the museum and the justification for the museum.

(2) A description of the facilities dedicated to the museum, including the location, size, and type of facilities and whether the facilities are included or eligible for inclusion on the National Register of Historic Places.

(3) An itemized listing of the funds appropriated to the Department of Defense that were obligated to support the museum during the fiscal year covered by the report and a description of the process used to determine the annual allocation of Department of Defense funds for the museum.

(4) An itemized listing of any other Federal funds, funds from a nonappropriated fund instrumentality account of the Department of Defense, and non-Federal funds obligated to support the museum.

(5) The management structure of the museum, including identification of the persons responsible for preparing the budget for the museum and for making acquisition and management decisions for the museum.

(6) The number of civilian employees of the Department of Defense and members of the armed forces who served full-time or part-time at the museum and their role in the management structure of the museum.

(c) Information on Support Priorities.—Each report under this section shall also include a separate description of the procedures used by the Secretary of Defense, in the case of museums identified in the report that are operated or supported by the Secretary of Defense, and the Secretary of a military department, in the case of museums identified in the report that are operated or supported by that Secretary, to prioritize funding and personnel support to the museums. The Secretary of Defense shall include a description of any such procedures applicable to the entire Department of Defense.

* * * * * *

§1130. Consideration of proposals for decorations not previously submitted in timely fashion: procedures for review

(a) Upon request of a Member of Congress, the Secretary concerned shall review a proposal for the award or presentation of a decoration (or the upgrading of a decoration), either for an individual or a unit, that is not otherwise authorized to be presented or awarded due to limitations established by law or policy for timely submission of a recommendation for such award or presentation. Based upon such review, the Secretary shall make a determination as to the merits of approving the award or presentation of the decoration.

(b) Upon making a determination under subsection (a) as to the merits of approving the award or presentation of the decoration, the Secretary concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives and to the requesting Member of Congress a detailed discussion of the rationale supporting the determination. If the determination includes a favorable recommendation for the award of the Medal of Honor, the Secretary of Defense, instead of the Secretary concerned, shall make the submission under this subsection.

(c) Determinations under this section regarding the award or presentation of a decoration shall be made in accordance with the same procedures that apply to the approval or disapproval of the award or presentation of a decoration when a recommendation for such award or presentation is submitted in a timely manner as prescribed by law or regulation.

(d) In this section:

(1) The term "Member of Congress" means -

(A) a Senator; or

(B) a Representative in, or a Delegate or Resident Commissioner to, Congress.

(2) The term "decoration" means any decoration or award that may be presented or awarded to a member or unit of the armed forces.

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§ 1557. Timeliness standards for disposition of applications before Corrections Boards

(a) Ten-Month Clearance Percentage. - Of the applications received by a Corrections Board during a period specified in the following table, the percentage on which final action by the Corrections Board must be completed within 10 months of receipt (other than for those applications considered suitable for administrative correction) is as follows:

For applications received during –	The percentage on which final Correction Board action must be completed within 10 months of receipt is -
the period of fiscal years 2001 and 2002	50
the period of fiscal years 2003 and 2004	60
the period of fiscal years 2005, 2006, and 2007	70
the period of fiscal years 2008, 2009, and 2010	80
the period of any fiscal year after fiscal year 2010	90

(b) Clearance Deadline for All Applications. - Final action by a Corrections Board on all applications received by the Corrections Board (other than those applications considered suitable for administrative correction) shall be completed within 18 months of receipt.

(c) Waiver Authority. - The Secretary of the military department concerned may exclude an individual application from the timeliness standards prescribed in subsections (a) and (b) if

the Secretary determines that the application warrants a longer period of consideration. The authority of the Secretary of a military department under this subsection may not be delegated.

(d) Failure To Meet Timeliness Standards Not To Affect Any Individual Application. - Failure of a Corrections Board to meet the applicable timeliness standard for any period of time under subsection (a) or (b) does not confer any presumption or advantage with respect to consideration by the board of any application.

~~(e) Reports on Failure To Meet Timeliness Standards. - The Secretary of the military department concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report not later than June 1 following any fiscal year during which the Corrections~~
~~Board of that Secretary's military department was unable to meet the applicable timeliness standard for that fiscal year under subsections (a) and (b). The report shall specify the reasons why the standard could not be met and the corrective actions initiated to ensure compliance in the future. The report shall also specify the number of waivers granted under subsection (c) during that fiscal year.~~

(f) Corrections Board Defined. - In this section, the term "Corrections Board" means -

(1) with respect to the Department of the Army, the Army Board for Correction of Military Records;

(2) with respect to the Department of the Navy, the Board for Correction of Naval Records; and

(3) with respect to the Department of the Air Force, the Air Force Board for Correction of Military Records.

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§ 1563. ~~Consideration of proposals for posthumous and honorary promotions and~~ appointments: procedures for review~~

~~(a) Review by Secretary Concerned. - Upon request of a Member of Congress, the Secretary concerned shall review a proposal for the posthumous or honorary promotion or appointment of a member or former member of the armed forces, or any other person considered qualified, that is not otherwise authorized by law. Based upon such review, the Secretary shall make a determination as to the merits of approving the posthumous or honorary promotion or appointment.~~

~~(b) Notice of Results of Review. - Upon making a determination under subsection (a) as to the merits of approving the posthumous or honorary promotion or appointment, the Secretary concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives and to the requesting Member of Congress a detailed discussion of the rationale supporting the determination.~~

~~(c) Definition. - In this section, the term "Member of Congress" means -~~

~~(1) a Senator; or~~

~~(2) a Representative in, or a Delegate or Resident Commissioner to, Congress.~~

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§1781b. Department of Defense policy and plans for military family readiness

(a) POLICY AND PLANS REQUIRED. - The Secretary of Defense shall develop a policy and plans for the Department of Defense for the support of military family readiness.

(b) PURPOSES. - The purposes of the policy and plans required under subsection (a) are as follows:

(1) ***

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(c) ELEMENTS OF POLICY. - The policy required under subsection (a) shall include the following elements:

(1) ***

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~~(d) ANNUAL REPORT. - Not later than March 1 each year, the Secretary of Defense shall submit to the congressional defense committees a report on the plans required under subsection (a) for the five-fiscal-year period beginning with the fiscal year in which the report is submitted. Each report shall include the plans covered by the report and an assessment of the discharge by the Department of Defense of the previous plans submitted under this section~~.

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§ 2216. Defense Modernization Account

(a) Establishment. - There is established in the Treasury an account to be known as the "Defense Modernization Account".

(b) Funds Available for Account. - The Defense Modernization Account shall consist of the following:

(1) Amounts appropriated to the Defense Modernization Account for the costs of commencing projects described in subsection (d)(1), and amounts reimbursed to the Defense Modernization Account under subsection (c)(1)(B)(iii) out of savings derived from such projects.

(2) Amounts transferred to the Defense Modernization Account under subsection (c).

(c) Transfers to Account. - (1)(A) Upon a determination by the Secretary of a military department or the Secretary of Defense with respect to Defense-wide appropriations accounts of the availability and source of funds described in subparagraph (B), that Secretary may transfer to the Defense Modernization Account during any fiscal year any amount of funds available to the Secretary described in that subparagraph. Such funds may be transferred to that account only after the Secretary concerned notifies the congressional defense committees in writing of the amount and source of the proposed transfer.

(B) This subsection applies to the following funds available to the Secretary concerned:

(i) Unexpired funds in appropriations accounts that are available for procurement and that, as a result of economies, efficiencies, and other savings achieved in carrying out a particular procurement, are excess to the requirements of that procurement.

(ii) Unexpired funds that are available during the final 30 days of a fiscal year for support of installations and facilities and that, as a result of economies, efficiencies, and other savings, are excess to the requirements for support of installations and facilities.

(iii) Unexpired funds in appropriations accounts that are available for procurement or operation and maintenance of a system, if and to the extent that savings are achieved for such accounts through reductions in life cycle costs of such system that result from one or more projects undertaken with respect to such systems with funds made available from the Defense Modernization Account under subsection (b)(1).

(C) Any transfer under subparagraph (A) shall be made under regulations prescribed by the Secretary of Defense.

(2) Funds referred to in paragraph (1), other than funds referred to in subparagraph (B)(iii) of such paragraph, may not be transferred to the Defense Modernization Account if –

(A) the funds are necessary for programs, projects, and activities that, as determined by the Secretary, have a higher priority than the purposes for which the funds would be available if transferred to that account; or

(B) the balance of funds in the account, after transfer of funds to the account, would exceed $1,000,000,000.

(3) Amounts credited to the Defense Modernization Account shall remain available for transfer until the end of the third fiscal year that follows the fiscal year in which the amounts are credited to the account.

(4) The period of availability of funds for expenditure provided for in sections 1551 and 1552 of title 31 may not be extended by transfer into the Defense Modernization Account.

(d) Authorized Use of Funds. - Funds in the Defense Modernization Account may be used for the following purposes:

(1) For paying the costs of commencing any project that, in accordance with criteria prescribed by the Secretary of Defense, is undertaken by the Secretary of a military department or the head of a Defense Agency or other element of the Department of Defense to reduce the life cycle cost of a new or existing system.

(2) For increasing, subject to subsection (e), the quantity of items and services procured under a procurement program in order to achieve a more efficient production or delivery rate.

(3) For research, development, test, and evaluation and for procurement necessary for modernization of an existing system or of a system being procured under an ongoing procurement program.

(e) Limitations. - (1) Funds in the Defense Modernization Account may not be used to increase the quantity of an item or services procured under a particular procurement program to the extent that doing so would -

(A) result in procurement of a total quantity of items or services in excess of -

(i) a specific limitation provided by law on the quantity of the items or services that may be procured; or

(ii) the requirement for the items or services as approved by the Joint Requirements Oversight Council and reported to Congress by the Secretary of Defense; or

(B) result in an obligation or expenditure of funds in excess of a specific limitation provided by law on the amount that may be obligated or expended, respectively, for that procurement program.

(2) Funds in the Defense Modernization Account may not be used for a purpose or program for which Congress has not authorized appropriations.

(3) Funds may not be transferred from the Defense Modernization Account in any year for the purpose of -

(A) making an expenditure for which there is no corresponding obligation; or

(B) making an expenditure that would satisfy an unliquidated or unrecorded obligation arising in a prior fiscal year.

(f) Transfer of Funds. - (1) The Secretary of Defense may transfer funds in the Defense Modernization Account to appropriations available for purposes set forth in subsection (d).

(2) Funds in the Defense Modernization Account may not be transferred under paragraph (1) until 30 days after the date on which the Secretary concerned notifies the congressional defense committees in writing of the amount and purpose of the proposed transfer.

(3) The total amount of transfers from the Defense Modernization Account during any fiscal year under this subsection may not exceed $500,000,000.

(g) Availability of Funds by Appropriation. - In addition to transfers under subsection (f), funds in the Defense Modernization Account may be made available for purposes set forth in subsection (d) in accordance with the provisions of appropriations Acts, but only to the extent authorized in an Act other than an appropriations Act.

(h) Secretary To Act Through Comptroller. - (1) The Secretary of Defense shall carry out this section through the Under Secretary of Defense (Comptroller), who shall be authorized to implement this section through the issuance of any necessary regulations, policies, and procedures after consultation with the General Counsel and Inspector General of the Department of Defense.

(2) The regulations prescribed under paragraph (1) shall, at a minimum, provide for -

(A) the submission of proposals by the Secretaries concerned or heads of Defense Agencies or other elements of the Department of Defense to the Comptroller for the use of Defense Modernization Account funds for purposes set forth in subsection (d);

(B) the use of a competitive process for the evaluation of such proposals and the selection of programs, projects, and activities to be funded out of the Defense Modernization Account from among those proposed for such funding; and

(C) the calculation of -

(i) the savings to be derived from projects described in subsection (d)(1) that are to be funded out of the Defense Modernization Account; and

(ii) the amounts to be reimbursed to the Defense Modernization Account out of such savings pursuant to subsection (c)(1)(B)(iii).

~~(i) Annual Report. - (1) Not later than 15 days after the end of each fiscal year, the Secretary of Defense shall submit to the congressional committees specified in paragraph (2) a report on the Defense Modernization Account. Each such report shall set forth the following:~~

~~(A) The amount and source of each credit to the account during that fiscal year.~~

~~(B) The amount and purpose of each transfer from the account during that fiscal year.~~

~~(C) The balance in the account at the end of the fiscal year and, of such balance, the amount attributable to transfers to the account from each Secretary concerned.~~

~~(2) The committees referred to in paragraph (1) are the congressional defense committees and the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives~~.

(j) Definitions. - In this section:

(1) The term "Secretary concerned" includes the Secretary of Defense with respect to Defense-wide appropriations accounts.

(2) The term "unexpired funds" means funds appropriated for a definite period that remain available for obligation.

(k) Expiration of Authority and Account. - (1) The authority under subsection (c) to transfer funds into the Defense Modernization Account terminates at the close of September 30, 2006.

(2) Three years after the termination date specified in paragraph (1), the Defense Modernization Account shall be closed and any remaining balance in the account shall be canceled and thereafter shall not be available for any purpose.

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§ 2244a. Equipment scheduled for retirement or disposal: limitation on expenditures for modifications

(a) PROHIBITION. - Except as otherwise provided in this section, the Secretary of a military department may not carry out a modification of an aircraft, weapon, vessel, or other item of equipment that the Secretary plans to retire or otherwise dispose of within five years after the date on which the modification, if carried out, would be completed.

(b) EXCEPTIONS. -

(1) Exception for below-threshold modifications. – The prohibition in subsection (a) does not apply to a modification for which the cost is less than $100,000.

(2) Exception for transfer of reusable items of value. – The prohibition in subsection (a) does not apply to a modification in a case in which -

(A) the reusable items of value, as determined by the Secretary, installed on the item of equipment as part of such modification will, upon the retirement or disposal of the item to be modified, be removed from such item of equipment, refurbished, and installed on another item of equipment; and

(B) the cost of such modification (including the cost of the removal and refurbishment of reusable items of value under subparagraph (A)) is less than $1,000,000.

(3) Exception for safety modifications. - The prohibition in subsection (a) does not apply to a safety modification.

(c) WAIVER AUTHORITY. - The Secretary concerned may waive the prohibition in subsection (a) in the case of any modification otherwise subject to that subsection if the Secretary determines that carrying out the modification is in the national security interest of the United States. ~~Whenever the Secretary issues such a waiver, the Secretary shall notify the congressional defense committees in writing~~.

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§ 2350b. Cooperative projects under Arms Export Control Act: acquisition of defense equipment

(a)(1) If the President delegates to the Secretary of Defense the authority to carry out section 27(d) of the Arms Export Control Act (22 U.S.C. 2767(d)), relating to cooperative projects (as defined in such section), the Secretary may utilize his authority under this title in carrying out contracts or obligations incurred under such section.

(2) Except as provided in subsection (c), chapter 137 of this title shall apply to such contracts (referred to in paragraph (1)) entered into by the Secretary of Defense. Except to the extent waived under subsection (c) or some other provision of law, all other provisions of law relating to procurement, if otherwise applicable, shall apply to such contracts entered into by the Secretary of Defense.

(b) When contracting or incurring obligations under section 27(d) of the Arms Export Control Act for cooperative projects, the Secretary of Defense may require subcontracts to be awarded to particular subcontractors in furtherance of the cooperative project.

(c)(1) Subject to paragraph (2), when entering into contracts or incurring obligations under section 27(d) of the Arms Export Control Act outside the United States, the Secretary of Defense may waive with respect to any such contract or subcontract the application of any provision of law, other than a provision of the Arms Export Control Act or section 2304 of this title, that specifically prescribes -

(A) procedures to be followed in the formation of contracts;

(B) terms and conditions to be included in contracts;

(C) requirements for or preferences to be given to goods grown, produced, or manufactured in the United States or in United States Government-owned facilities or for services to be performed in the United States; or

(D) requirements regulating the performance of contracts.

(2) A waiver may not be made under paragraph (1) unless the Secretary determines that the waiver is necessary to ensure that the cooperative project will significantly further standardization, rationalization, and interoperability.

(3) The authority of the Secretary to make waivers under this subsection may be delegated only to the Deputy Secretary of Defense or the Acquisition Executive designated for the Office of the Secretary of Defense.

~~(d)(1) The Secretary of Defense shall notify the Congress each time he requires that a prime contract be awarded to a particular prime contractor or that a subcontract be awarded to a particular subcontractor to comply with a cooperative agreement. The Secretary shall include in each such notice the reason for exercising his authority to designate a particular contractor or subcontractor, as the case may be.~~

~~(2) The Secretary shall also notify the Congress each time he exercises a waiver under subsection (c) and shall include in such notice the particular provision or provisions of law that were waived.~~

~~(3) A report under this subsection shall be required only to the extent that the information required by this subsection has not been provided in a report made by the President under section 27(e) of the Arms Export Control Act (22 U.S.C. 2767(e)).~~

(e)(1) In carrying out a cooperative project under section 27 of the Arms Export Control Act, the Secretary of Defense may agree that a participant (other than the United States) or a NATO organization may make a contract for requirements of the United States under the project if the Secretary determines that such a contract will significantly further standardization, rationalization, and interoperability. Except to the extent waived under this section or under any other provision of law, the Secretary shall ensure that such contract will be made on a competitive basis and that United States sources will not be precluded from competing under the contract.

(2) If a participant (other than the United States) in such a cooperative project or a NATO organization makes a contract on behalf of such project to meet the requirements of the United States, the contract may permit the contracting party to follow its own procedures relating to contracting.

(f) In carrying out a cooperative project, the Secretary of Defense may also agree to the disposal of property that is jointly acquired by the members of the project without regard to any laws of the United States applicable to the disposal of property owned by the United States. Disposal of such property may include a transfer of the interest of the United States in such property to one of the other governments participating in the cooperative agreement or the sale of such property. Payment for the transfer or sale of any interest of the United States in any such property shall be made in accordance with the terms of the cooperative agreement.

(g) Nothing in this section shall be construed as authorizing the Secretary of Defense -

(1) to waive any of the financial management responsibilities administered by the Secretary of the Treasury; or

(2) to waive the cargo preference laws of the United States, including section 2631 of this title and section 55305 of title 46.

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§ 2350j. Burden sharing contributions by designated countries and regional organizations

(a) Authority To Accept Contributions. - The Secretary of Defense, after consultation with the Secretary of State, may accept cash contributions from any country or regional organization designated for purposes of this section by the Secretary of Defense, in consultation with the Secretary of State, for the purposes specified in subsection (c).

(b) Accounting. - Contributions accepted under subsection (a) which are not related to security assistance may be accepted, managed, and expended in dollars or in the currency of the host nation (or, in the case of a contribution from a regional organization, in the currency in which the contribution was provided). Any such contribution shall be placed in an account established for such purpose and shall remain available until expended for the purposes specified in subsection (c). The Secretary of Defense shall establish a separate account for such purpose for each country or regional organization from which such contributions are accepted under subsection (a).

(c) Availability of Contributions. - Contributions accepted under subsection (a) shall be available only for the payment of the following costs:

(1) Compensation for local national employees of the Department of Defense.

(2) Military construction projects of the Department of Defense.

(3) Supplies and services of the Department of Defense.

(d) Authorization of Military Construction. – Contributions placed in an account established under subsection (b) may be used -

(1) by the Secretary of Defense to carry out a military construction project that is consistent with the purposes for which the contributions were made and is not otherwise authorized by law; or

(2) by the Secretary of a military department, with the approval of the Secretary of Defense, to carry out such a project.

~~(e) Notice and Wait Requirements. - (1) When a decision is made to carry out a military construction project under subsection (d), the Secretary of Defense shall submit to the congressional defense committees a report containing -~~

~~(A) an explanation of the need for the project;~~

~~(B) the then current estimate of the cost of the project; and~~

~~(C) a justification for carrying out the project under that subsection.~~

~~(2) The Secretary of Defense or the Secretary of a military department may not commence a military construction project under subsection (d) until the end of the 21-day period beginning on the date on which the Secretary of Defense submits the report under paragraph (1) regarding the project or, if earlier, the end of the 14-day period beginning on the date on which a copy of that report is provided in an electronic medium pursuant to section 480 of this title.~~

~~(3)(A) A military construction project under subsection (d) may be carried out without regard to the requirement in paragraph (1) and the limitation in paragraph (2) if the project is necessary to support the armed forces in the country or region in which the project is carried out by reason of a declaration of war, or a declaration by the President of a national emergency pursuant to the National Emergencies Act (50 U.S.C. 1601 et seq.), that is in force at the time of the commencement of the project.~~

~~(B) When a decision is made to carry out a military construction project under subparagraph (A), the Secretary of Defense shall submit to the congressional defense committees -~~

~~(i) a notice of the decision; and~~

~~(ii) a statement of the current estimated cost of the project, including the cost of any real property transaction in connection with the project~~.

(f) Reports. - Not later than 30 days after the end of each fiscal year, the Secretary of Defense shall submit to Congress a report specifying separately for each country and regional organization from which contributions have been accepted by the Secretary under subsection (a) -

(1) the amount of the contributions accepted by the Secretary during the preceding fiscal year under subsection (a) and the purposes for which the contributions were made; and

(2) the amount of the contributions expended by the Secretary during the preceding fiscal year and the purposes for which the contributions were expended.

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§ 2350m. Participation in multinational military centers of excellence

(a) PARTICIPATION AUTHORIZED. - The Secretary of Defense may, with the concurrence of the Secretary of State, authorize the participation of members of the armed forces and Department of Defense civilian personnel in any multinational military center of excellence for purposes of -

(1) enhancing the ability of military forces and civilian personnel of the nations participating in such center to engage in joint exercises or coalition or international military operations; or

(2) improving interoperability between the armed forces and the military forces of friendly foreign nations.

(b) MEMORANDUM OF UNDERSTANDING. - (1) The participation of members of the armed forces or Department of Defense civilian personnel in a multinational military center of excellence under subsection (a) shall be in accordance with the terms of one or more memoranda of understanding entered into by the Secretary of Defense, with the concurrence of the Secretary of State, and the foreign nation or nations concerned.

(2) If Department of Defense facilities, equipment, or funds are used to support a multinational military center of excellence under subsection (a), the memoranda of understanding under paragraph (1) with respect to that center shall provide details of any cost-sharing arrangement or other funding arrangement.

(c) AVAILABILITY OF APPROPRIATED FUNDS. - (1) Funds appropriated to the Department of Defense for operation and maintenance are available as follows:

(A) To pay the United States share of the operating expenses of any multinational military center of excellence in which the United States participates under this section.

(B) To pay the costs of the participation of members of the armed forces and Department of Defense civilian personnel in multinational military centers of excellence under this section, including the costs of expenses of such participants.

(2) No funds may be used under this section to fund the pay or salaries of members of the armed forces and Department of Defense civilian personnel who participate in multinational military centers of excellence under this section.

(d) USE OF DEPARTMENT OF DEFENSE FACILITIES AND EQUIPMENT. - Facilities and equipment of the Department of Defense may be used for purposes of the support of multinational military centers of excellence under this section that are hosted by the Department.

~~(e) ANNUAL REPORTS ON USE OF AUTHORITY. - (1) Not later than October 31, 2009, and annually thereafter, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the use of the authority in this section during the preceding fiscal year.~~

~~(2) Each report required by paragraph (1) shall include, for the fiscal year covered by such report, the following:~~

~~(A) A detailed description of the participation of the Department of Defense, and of members of the armed forces and civilian personnel of the Department, in multinational military centers of excellence under the authority of this section.~~

~~(B) For each multinational military center of excellence in which the Department of Defense, or members of the armed forces or civilian personnel of the Department, so participated –~~

~~(i) a description of such multinational military center of excellence;~~

~~(ii) a description of the activities participated in by the Department, or by members of the armed forces or civilian personnel of the Department; and~~

~~(iii) a statement of the costs of the Department for such participation, including –~~

~~(I) a statement of the United States share of the expenses of such center and a statement of the percentage of the United States share of the expenses of such center to the total expenses of such center; and~~

~~(II) a statement of the amount of such costs (including a separate statement of the amount of costs paid for under the authority of this section by category of costs).~~

(f) MULTINATIONAL MILITARY CENTER OF EXCELLENCE DEFINED. – In this section, the term "multinational military center of excellence" means an entity sponsored by one or more nations that is accredited and approved by the Military Committee of the North Atlantic Treaty Organization (NATO) as offering recognized expertise and experience to personnel participating in the activities of such entity for the benefit of NATO by providing such personnel opportunities to -

(1) enhance education and training;

(2) improve interoperability and capabilities;

(3) assist in the development of doctrine; and

(4) validate concepts through experimentation.

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~~**§ 2352. Defense Advanced Research Projects Agency: biennial strategic plan**~~

~~(a) REQUIREMENT FOR STRATEGIC PLAN.—Every other year, and in time for submission to Congress under subsection (c), the Director of the Defense Advanced Research Projects Agency shall prepare a strategic plan for the activities of that agency.~~

~~(b) CONTENTS.—The strategic plan required by subsection (a) shall include the following matters:~~

~~(1) The long-term strategic goals of that agency.~~

~~(2) Identification of the research programs of that agency that support—~~

~~(A) achievement of those strategic goals; and~~

~~(B) exploitation of opportunities that hold the potential for yielding significant military benefits.~~

~~(3) The connection of the activities and programs of that agency to activities and missions of the armed forces.~~

~~(4) A technology transition strategy for the programs of that agency.~~

~~(5) A description of the policies of that agency on the management, organization, and personnel of that agency.~~

~~(c) SUBMISSION OF PLAN TO CONGRESS.—The Secretary of Defense shall submit to Congress the strategic plan most recently prepared under subsection (a) at the same time that the President submits to Congress the budget for an even-numbered fiscal year under section 1105(a) of title 31.~~

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§ 2410i. Prohibition on contracting with entities that comply with the secondary Arab boycott of Israel

(a) POLICY. - Under section 3(5)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2402(5)(A)), it is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any other United States
person.

(b) PROHIBITION. - (1) Consistent with the policy referred to in subsection (a), the Department of Defense may not award a contract for an amount in excess of the simplified acquisition threshold (as defined in section 134 of title 41) to a foreign entity unless that entity certifies to the Secretary of Defense that it does not comply with the secondary Arab boycott of Israel.

(2) In paragraph (1), the term "foreign entity" means a foreign person, a foreign company, or any other foreign entity.

(c) WAIVER AUTHORITY. - The Secretary of Defense may waive the prohibition in subsection (b) in specific instances when the Secretary determines that the waiver is necessary in the national security interests of the United States. ~~Within 15 days after the end of each fiscal year, the Secretary shall submit to Congress a report identifying each contract for which a waiver was granted under this subsection during that fiscal year~~.

(d) EXCEPTIONS. - Subsection (b) does not apply -

(1) to contracts for consumable supplies, provisions, or services that are intended to be used for the support of United States forces or of allied forces in a foreign country; or

(2) to contracts pertaining to the use of any equipment, technology, data, or services for intelligence or classified purposes by the United States Government in the interests of national security or to the acquisition or lease of any such equipment, technology, data, or services by the United States Government in the interests of national security.

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§ 2475. ~~Consolidation, restructuring, or reengineering of organizations, functions, or activities: notification requirements~~

~~(a) Requirement to Submit Plan Annually. - Concurrently with the submission of the President's annual budget request under section 1105 of title 31, the Secretary of Defense shall submit to Congress each Strategic Sourcing Plan of Action for the Department of Defense (as identified in the Department of Defense Interim Guidance dated February 29, 2000, or any successor Department of Defense guidance or directive), for the following year~~.

~~(b) Notification of Decision To Execute Plan.- If a decision is made to consolidate, restructure, or reengineer an organization, function, or activity of the Department of Defense pursuant to a Strategic Sourcing Plan of Action described in subsection (a), and such consolidation, restructuring, or reengineering would result in a manpower reduction affecting 50 or more personnel of the Department of Defense (including military and civilian personnel) -~~

~~(1) the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report describing that decision, including -~~

~~(A) a projection of the savings that will be realized as a result of the consolidation, restructuring, or reengineering, compared with the cost incurred by the Department of Defense to perform the function or to operate the organization or activity prior to such proposed consolidation, restructuring, or reengineering;~~

~~(B) a description of all missions, duties, or military requirements that will be affected as a result of the decision to consolidate, restructure, or reengineer the organization, function, or activity that was analyzed;~~

~~(C) the Secretary's certification that the consolidation, restructuring, or reengineering will not result in any diminution of military readiness;~~

~~(D) a schedule for performing the consolidation, restructuring, or reengineering; and~~

~~(E) the Secretary's certification that the entire analysis for the consolidation, restructuring, or reengineering is available for examination; and~~

~~(2) the head of the Defense Agency or the Secretary of the military department concerned may not implement the plan until 30 days after the date that the agency head or Secretary submits notification to the Committees on Armed Services of the Senate and House of Representatives of the intent to carry out such plan.~~

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~~§ 2504. Annual report to Congress~~

~~The Secretary of Defense shall transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives by March 1 of each year a report which shall include the following information:~~

~~(1) A description of the departmental guidance prepared pursuant to section 2506 of this title.~~

~~(2) A description of the methods and analyses being undertaken by the Department of Defense alone or in cooperation with other Federal agencies, to identify and address concerns regarding technological and industrial capabilities of the national technology and industrial base.~~

~~(3) A description of the assessments prepared pursuant to section 2505 of this title and other analyses used in developing the budget submission of the Department of Defense for the next fiscal year.~~

~~(4) Identification of each program designed to sustain specific essential technological and industrial capabilities and processes of the national technology and industrial base.~~

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§2536. Award of certain contracts to entities controlled by a foreign government: prohibition

(a) IN GENERAL.—A Department of Defense contract or Department of Energy contract under a national security program may not be awarded to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract.

(b) WAIVER AUTHORITY.—~~(1)~~ The Secretary concerned may waive the application of subsection (a) to a contract award if—

(~~A~~1) the Secretary concerned determines that the waiver is essential to the national security interests of the United States; or

(~~B~~2) in the case of a contract awarded for environmental restoration, remediation, or waste management at a Department of Defense or Department of Energy facility—

(~~i~~A) the Secretary concerned determines that the waiver will advance the environmental restoration, remediation, or waste management objectives of the department concerned and will not harm the national security interests of the United States; and

(~~ii~~B) the entity to which the contract is awarded is controlled by a foreign government with which the Secretary concerned is authorized to exchange Restricted Data under section 144 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)).

~~(2) The Secretary concerned shall notify Congress of any decision to grant a waiver under paragraph (1)(B) with respect to a contract. The contract may be awarded only after the end of the 45-day period beginning on the date the notification is received by the committees.~~

(c) DEFINITIONS.—In this section:

(1) The term "entity controlled by a foreign government" includes—

(A) any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; and

(B) any individual acting on behalf of a foreign government,

as determined by the Secretary concerned. Such term does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.

(2) The term "proscribed category of information" means a category of information that—

(A) with respect to Department of Defense contracts—

(i) includes special access information;

(ii) is determined by the Secretary of Defense to include information the disclosure of which to an entity controlled by a foreign government is not in the national security interests of the United States; and

(iii) is defined in regulations prescribed by the Secretary of Defense for the purposes of this section; and

(B) with respect to Department of Energy contracts—

(i) is determined by the Secretary of Energy to include information described in subparagraph (A)(ii); and

(ii) is defined in regulations prescribed by the Secretary of Energy for the purposes of this section.

(3) The term "Secretary concerned" means—

(A) the Secretary of Defense, with respect to Department of Defense contracts; and

(B) the Secretary of Energy, with respect to Department of Energy contracts.

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§ 2804. Contingency construction

(a) Within the amount appropriated for such purpose, the Secretary of Defense may carry out a military construction project not otherwise authorized by law, or may authorize the Secretary of a military department to carry out such a project, if the Secretary of Defense determines that deferral of the project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or national interest.

(b) When a decision is made to carry out a military construction project under this section, the Secretary of Defense shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include (1) the justification for the project and the current estimate of the cost of the project, and (2) the justification for carrying out the project under this section. ~~The project may then be carried out only after the end of the 14-day period beginning on the date the notification is received by such committees or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.~~

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§ 2827. Relocation of military family housing units

~~(a) Subject to subsection (b), the~~ The Secretary concerned may relocate existing military family housing units from any location where the number of such units exceeds requirements for military family housing to any military installation where there is a housing shortage.

~~(b) A contract to carry out a relocation of military family housing units under subsection (a) may not be awarded until (1) the Secretary concerned has notified the appropriate committees of Congress of the proposed new locations of the housing units to be relocated and the estimated cost of and source of funds for the relocation, and (2) a period of 21 days has elapsed after the notification has been received by those committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title~~.

§ 2828. Leasing of military family housing

(a)(1) Subject to paragraph (2), the Secretary of the military department concerned may lease housing facilities at or near a military installation in the United States, Puerto Rico, or Guam for assignment, without rental charge, as family housing to members of the armed forces

and for assignment, with fair market rental charge, as family housing to civilian employees of the Department of Defense stationed at such installation.

(2) A lease may only be made under paragraph (1) if the Secretary concerned finds that there is a shortage of adequate housing at or near such military installation and that -

(A) the requirement for such housing is temporary;

(B) leasing would be more cost effective than construction or acquisition of new housing;

(C) family housing is required for personnel attending service school academic courses on permanent change of station orders;

(D) construction of family housing at such installation has been authorized by law but is not yet completed; or

(E) a military construction authorization bill pending in Congress includes a request for authorization of construction of family housing at such installation.

(b)(1) Not more than 10,000 family housing units may be leased at any one time under subsection (a).

(2) Except as provided in paragraphs (3), (4), and (7), expenditures for the rental of housing units under subsection (a) (including the cost of utilities, maintenance, and operation) may not exceed $12,000 per unit per year, as adjusted from time to time under paragraph (5).

(3) Not more than 500 housing units may be leased under subsection (a) for which the expenditure for the rental of such units (including the cost of utilities, maintenance, and operation) exceeds the maximum amount per unit per year in effect under paragraph (2) but does not exceed $14,000 per unit per year, as adjusted from time to time under paragraph (5).

(4)(A) The Secretary of the Army may lease not more than eight housing units in the vicinity of Miami, Florida, for key and essential personnel, as designated by the Secretary, for the United States Southern Command for which the expenditure for the rental of such units (including the cost of utilities, maintenance, and operation, including security enhancements) exceeds the expenditure limitations in paragraphs (2) and (3).

(B) The amount of all leases under this paragraph may not exceed $280,000 per year, as adjusted from time to time under paragraph (6).

(C) The term of any lease under this paragraph may not exceed 5 years.

(D) Until September 30, 2008, the Secretary of the Army may authorize family members of a member of the armed forces on active duty who is assigned to a family-member-restricted area and who, before such assignment, was occupying a housing unit leased under this paragraph, to remain in the leased housing unit until the member completes the assignment. Costs incurred for the leased housing unit during the assignment shall be included in the costs
subject to the limitation under subparagraph (B).

(5) At the beginning of each fiscal year, the Secretary concerned shall adjust the maximum lease amount provided for leases under paragraphs (2), (3), and (7) for the previous fiscal year by the percentage (if any) by which the national average monthly cost of housing (as calculated for purposes of determining rates of basic allowance for housing under section 403 of

title 37) for the preceding fiscal year exceeds the national average monthly cost of housing (as so calculated) for the fiscal year before such preceding fiscal year.

(6) At the beginning of each fiscal year, the Secretary of the Army shall adjust the maximum aggregate amount for leases under paragraph (4) for the previous fiscal year by the percentage (if any) by which the annual average cost of housing for the Miami Military Housing Area (as calculated for purposes of determining rates of basic allowance for housing under section 403 of title 37) for the preceding fiscal year exceeds the annual average cost of housing for the Miami Military Housing Area (as so calculated) for the fiscal year before such preceding fiscal year.

(7)(A) Not more than 600 housing units may be leased by the Secretary of the Army under subsection (a) for which the expenditure for the rental of such units (including the cost of utilities, maintenance, and operation) exceeds the maximum amount per unit per year in effect under paragraph (2) but does not exceed $35,000 per unit per year, as adjusted from time to time under paragraph (5).

(B) The maximum lease amount provided in subparagraph (A) shall apply only to Army family housing in areas designated by the Secretary of the Army.

(C) The term of a lease under subparagraph (A) may not exceed 2 years.

(c) The Secretary concerned may lease housing facilities in foreign countries for assignment, without rental charge, as family housing to members of the armed forces and for assignment, with or without rental charge, as family housing to civilian employees of the Department of Defense -

(1) under circumstances specified in clause (A), (B), (D), or (E) of subsection (a)(2);

(2) for incumbents of special command positions (as determined by the Secretary of Defense);

(3) in countries where excessive costs of housing or other lease terms would cause undue hardship on Department of Defense personnel; and

(4) in countries that prohibit leases by individual military or civilian personnel of the United States.

(d)(1) Leases of housing units in foreign countries under subsection (c) for assignment as family housing may be for any period not in excess of 10 years, or 15 years in the case of leases in Korea, and the costs of such leases for any year may be paid out of annual appropriations for that year.

(2) The Secretary may enter into an agreement under this paragraph in connection with a lease entered into under subsection (c). Such an agreement -

(A) shall be for the purpose of compensating a developer for any costs resulting from the termination of the lease during the construction of the housing units that are to be occupied pursuant to the lease;

(B) may be for a period not in excess of three years; and

(C) shall include a provision that the obligation of the United States to make payments under the agreement in any fiscal year is subject to the availability of appropriations.

(e)(1) Expenditures for the rental of family housing in foreign countries (including the costs of utilities, maintenance, and operation) may not exceed $20,000 per unit per year, except that 450 units may be leased in foreign countries for not more than $25,000 per unit per year. These maximum lease amounts may be waived by the Secretary concerned with respect to not more than a total of 350 such units that are leased for incumbents of special positions or for personnel assigned to Defense Attache Offices or that are leased in countries where excessive costs of housing would cause undue hardship on Department of Defense personnel.

(2) In addition to the 450 units of family housing referred to in paragraph (1) for which the maximum lease amount is $25,000 per unit per year, the Secretaries of the military departments may lease not more than 3,300 units of family housing in Italy, subject to that maximum lease amount.

(3) In addition to the 450 units of family housing referred to in paragraph (1) for which the maximum lease amount is $25,000 per unit per year, the Secretary of the Army may lease not more than 1,175 units of family housing in Korea subject to that maximum lease amount.

(4) In addition to the units of family housing referred to in paragraph (1) for which the maximum lease amount is $25,000 per unit per year, the Secretary of the Army may lease not more than 2,800 units of family housing in Korea subject to a maximum lease amount of $35,000 per unit per year.

(5) The Secretary concerned shall adjust the maximum lease amounts provided for under paragraphs (1), (2), (3), and (4) for the previous fiscal year -

(A) for foreign currency fluctuations from October 1, 1987; and

(B) at the beginning of each fiscal year, by the percentage (if any) by which the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, during the preceding fiscal year exceeds such Consumer Price Index for the fiscal year before such preceding fiscal year.

(6) The maximum number of family housing units that may be leased in foreign countries under this section at any one time is 55,775.

~~(f) A lease for family housing facilities, or for real property related to family housing facilities, in a foreign country for which the average estimated annual rental during the term of the lease exceeds $1,000,000 may not be made under this section until (1) the Secretary concerned provides to the appropriate committees of Congress written notification of the facts concerning the proposed lease, and (2) a period of 21 days elapses after the notification is received by those committees or, if earlier, a period of 14 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title~~.

(g) Appropriations available to the Department of Defense for maintenance or construction may be used for the acquisition of interests in land under this section.

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§ 2835. Long-term leasing of military family housing to be constructed

(a) BUILD AND LEASE AUTHORIZED. ~~Subject to subsection (b), the~~The Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard, may enter into a contract for the lease of family housing units to be constructed or rehabilitated to residential use near a military installation within the United States under the Secretary's jurisdiction at which there is a shortage of family housing. Housing units leased under this section shall be assigned, without rental charge, as family housing to members of the armed forces who are eligible for assignment to military family housing.

~~(b) SUBMISSION AND AUTHORIZATION OF PROPOSED LEASE CONTRACTS. (1) The Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard, may enter into a lease contract under subsection (a) for such military housing as is authorized by law for the purposes of this section.~~

~~(2) The budget material submitted to Congress by the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, in connection with the budget submitted pursuant to section 1105 of title 31 for each fiscal year shall include materials that identify the military housing projects for which lease contracts are proposed to be entered into under subsection (a) in such fiscal year~~.

(c) COMPETITIVE PROCESS. - Each contract under subsection (a) shall be awarded through the use of publicly advertised, competitively bid, or competitively negotiated, contracting procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary of a military department, or the Secretary of Homeland Security, as the case may be, shall solicit bids or proposals for a contract for the lease of military housing authorized in accordance with subsection (b)(1). Such a contract may provide for the contractor of the housing facilities to operate and maintain such housing facilities during the term of the lease.

(d) CONDITIONS ON OBLIGATION OF FUNDS. - A lease contract entered into for a military housing project under subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that project for that fiscal year.

(3) A statement that such a commitment entered into under the authority of this section does not constitute an obligation of the United States.

(4) A requirement that housing units constructed pursuant to the contract shall be constructed -

(A) to Department of Defense specifications, in the case of a Department of Defense contract; and

(B) to Department of Homeland Security specifications, in the case of a contract for the Coast Guard.

(e) LEASE TERM. - A contract under this section may be for any period not in excess of 20 years (excluding the period required for construction of the housing facilities).

(f) RIGHT OF FIRST REFUSAL TO ACQUIRE. - A contract under this section shall provide that, upon the termination of the lease period, the United States shall have the right of first refusal to acquire all right, title, and interest to the housing facilities constructed and leased under the contract.

~~(g) NOTICE AND WAIT REQUIREMENTS. – A contract may not be entered into for the lease of housing facilities under this section until –~~

~~(1) the Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard, submits to the appropriate committees of Congress, in writing, an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost-effective when compared with alternative means of furnishing the same housing facilities; and~~

~~(2) a period of 21 days has expired following the date on which the economic analysis is received by those committees or, if earlier, a period of 14 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title~~.

(h) SUPPORT BUILDINGS. - A contract for the lease of family housing under this section may include provision for the lease of a child care center, civic center building, and similar type buildings constructed for the support of family housing.

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§ 2837. Limited partnerships with private developers of housing

(a) LIMITED PARTNERSHIPS. - (1) In order to meet the housing requirements of members of the armed forces, and the dependents of such members, at a military installation described in paragraph (2), the Secretary of a military department may enter into a limited partnership with one or more private developers to encourage the construction of housing and accessory structures within commuting distance of the installation. The Secretary may contribute not less than five percent, but not more than 35 percent, of the development costs under a limited partnership.

(2) Paragraph (1) applies to a military installation under the jurisdiction of the Secretary concerned at which there is a shortage of suitable housing to meet the requirements of members and dependents referred to in such paragraph.

(b) COLLATERAL INCENTIVE AGREEMENTS. - The Secretary concerned may also enter into collateral incentive agreements with private developers who enter into a limited partnership under subsection (a) to ensure that, where appropriate -

(1) a suitable preference will be afforded members of the armed forces in the lease or purchase, as the case may be, of a reasonable number of the housing units covered by the limited partnership; or

(2) the rental rates or sale prices, as the case may be, for some or all of such units will be affordable for such members.

(c) SELECTION OF INVESTMENT OPPORTUNITIES. – ~~(1)~~ The Secretary concerned shall use publicly advertised, competitively bid or competitively negotiated, contracting procedures, as provided in chapter 137 of this title, to enter into limited partnerships under subsection (a).

~~(2) When a decision is made to enter into a limited partnership under subsection (a), the Secretary concerned shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include the justification for the limited partnership, the terms and conditions of the limited partnership, a description of the development costs for projects under the limited partnership, and a description of the share of such costs to be incurred by the Secretary concerned. The Secretary concerned may then enter into the limited partnership only after the end of the 21-day period beginning on the date the report is received by such committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title~~.

(d) ACCOUNT. - (1) There is hereby established on the books of the Treasury an account to be known as the "Defense Housing Investment Account".

(2) There shall be deposited into the Account -

(A) such funds as may be authorized for and appropriated to the Account; and

(B) any proceeds received by the Secretary concerned from the repayment of investments or profits on investments of the Secretary under subsection (a).

(3) From such amounts as are provided in advance in appropriation Acts, funds in the Account shall be available to the Secretaries concerned in amounts determined by the Secretary of Defense for contracts, investments, and expenses necessary for the implementation of this section.

(4) The Secretary concerned may not enter into a contract in connection with a limited partnership under subsection (a) or a collateral incentive agreement under subsection (b) unless a sufficient amount of the unobligated balance of the funds in the Account is available to the Secretary, as of the time the contract is entered into, to satisfy the total obligations to be incurred by the United States under the contract.

[(e) Repealed.]

~~(f) REPORT. - Not later than 60 days after the end of each fiscal year in which activities are carried out under this section, the Secretaries concerned shall jointly transmit to Congress a report specifying the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of all other expenditures made pursuant to such section during such fiscal year~~.

(g) TRANSFER OF LANDS PROHIBITED. - Nothing in this section shall be construed to permit the Secretary concerned, as part of a limited partnership entered into under this section, to transfer the right, title, or interest of the United States in any real property under the jurisdiction of the Secretary concerned.

(h) EXPIRATION AND TERMINATION OF AUTHORITY. - The authority of the Secretary concerned to enter into a limited partnership under this section shall expire on September 30, 2000.

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§ 2854a. Conveyance of damaged or deteriorated military family housing; use of proceeds

(a) AUTHORITY TO CONVEY. - (1) The Secretary concerned may convey any family housing facility that, due to damage or deterioration, is in a condition that is uneconomical to repair. Any conveyance of a family housing facility under this section may include a conveyance of the real property associated with the facility conveyed.

(2) The authority of this section does not apply to family housing facilities located at military installations approved for closure under a base closure law or family housing facilities located at an installation outside the United States at which the Secretary of Defense terminates operations.

(3) The aggregate total value of the family housing facilities conveyed by the Department of Defense under the authority in this subsection in any fiscal year may not exceed $5,000,000.

(4) For purposes of this subsection, a family housing facility is in a condition that is uneconomical to repair if the cost of the necessary repairs for the facility would exceed the amount equal to 70 percent of the cost of constructing a family housing facility to replace such facility.

(b) CONSIDERATION. - (1) As consideration for the conveyance of a family housing facility under subsection (a), the person to whom the facility is conveyed shall pay the United States an amount equal to the fair market value of the facility conveyed, including any real property conveyed along with the facility.

(2) The Secretary concerned shall determine the fair market value of any family housing facility and associated real property that is conveyed under subsection (a). Such determination shall be final.

~~(c) NOTICE AND WAIT REQUIREMENTS. - The Secretary concerned may not enter into an agreement to convey a family housing facility under this section until -~~

~~(1) the Secretary submits to the appropriate committees of Congress, in writing, a justification for the conveyance under the agreement, including -~~

~~(A) an estimate of the consideration to be provided the United States under the agreement;~~

~~(B) an estimate of the cost of repairing the family housing facility to be conveyed; and~~

~~(C) an estimate of the cost of replacing the family housing facility to be conveyed; and~~

~~(2) a period of 21 days has elapsed after the date on which the justification is received by the committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the justification is provided in an electronic medium pursuant to section 480 of this title~~.

(d) INAPPLICABILITY OF CERTAIN PROPERTY DISPOSAL LAWS. – The following provisions of law do not apply to the conveyance of a family housing facility under this section:

(1) Subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(2) Title V of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411 et seq.).

(e) USE OF PROCEEDS. - (1) The proceeds of any conveyance of a family housing facility under this section shall be credited to the appropriate fund established under section 2883 of this title and shall be available -

(A) to construct family housing units to replace the family housing facility conveyed under this section, but only to the extent that the number of units constructed with such proceeds does not exceed the number of units of military family housing of the facility conveyed;

(B) to repair or restore existing military family housing; and

(C) to reimburse the Secretary concerned for the costs incurred by the Secretary in conveying the family housing facility.

(2) Notwithstanding section 2883(d) of this title, proceeds derived from a conveyance of a family housing facility under this section shall be available under paragraph (1) without any further appropriation.

(f) DESCRIPTION OF PROPERTY. - The exact acreage and legal description of any family housing facility conveyed under this section, including any real property associated with such facility, shall be determined by such means as the Secretary concerned considers satisfactory, including by survey in the case of real property.

(g) ADDITIONAL TERMS AND CONDITIONS. - The Secretary concerned may require such additional terms and conditions in connection with the conveyance of family housing facilities under this section as the Secretary considers appropriate to protect the interests of the United States.

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§ 2861. Military construction projects in connection with industrial facility investment program

(a) AUTHORITY. - The Secretary of Defense may carry out a military construction project, not previously authorized, for the purpose of carrying out activities under section 2474(a)(2) of this title, using funds appropriated or otherwise made available for that purpose in military construction accounts.

(b) CREDITING OF FUNDS TO CAPITAL BUDGET. - Funds appropriated or otherwise made available in a fiscal year for the purpose of carrying out a military construction project with respect to a covered depot (as defined in subsection (e) of section 2476 of this title) may be credited to the amount required by subsection (a) of such section to be invested in the capital budgets of the covered depots in that fiscal year.

~~(c) NOTICE AND WAIT REQUIREMENT. - When a decision is made to carry out a project under subsection (a), the Secretary of Defense shall notify in writing the appropriate committees of Congress of that decision and the savings estimated to be realized from the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.~~

~~(d) ANNUAL REPORT. - Not later than December 31 of each year, the Secretary shall submit to Congress a report describing actions taken under this section and the savings realized from such actions during the fiscal year ending in the year in which the report is submitted.~~

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§ 2866. Water conservation at military installations

(a) Water Conservation Activities. – (1) ***

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(c) Water Conservation Construction Projects. - ~~(1)~~ The Secretary of Defense may carry out a military construction project for water conservation, not previously authorized, using funds appropriated or otherwise made available to the Secretary for water conservation.

~~(2) When a decision is made to carry out a project under paragraph (1), the Secretary of Defense shall notify the appropriate committees of Congress of that decision. Such project may be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.~~

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§ 2875. Investments

(a) INVESTMENTS AUTHORIZED. - The Secretary concerned may make investments in an eligible entity carrying out projects for the acquisition or construction of housing units suitable for use as military family housing or as military unaccompanied housing.

(b) FORMS OF INVESTMENT. - An investment under this section may take the form of an acquisition of a limited partnership interest by the United States, a purchase of stock or other equity instruments by the United States, a purchase of bonds or other debt instruments by the United States, or any combination of such forms of investment.

(c) LIMITATION ON VALUE OF Investment. – (1) The cash amount of an investment under this section in an eligible entity may not exceed an amount equal to 33 1/3 percent of the capital cost (as determined by the Secretary concerned) of the project or projects that the eligible entity proposes to carry out under this section with the investment.

(2) If the Secretary concerned conveys land or facilities to an eligible entity as all or part of an investment in the eligible entity under this section, the total value of the investment by the Secretary under this section may not exceed an amount equal to 45 percent of the capital cost (as determined by the Secretary) of the project or projects that the eligible entity proposes to carry out under this section with the investment.

(3) In this subsection, the term "capital cost", with respect to a project for the acquisition or construction of housing, means the total amount of the costs included in the basis of the housing for Federal income tax purposes.

(d) COLLATERAL INCENTIVE AGREEMENTS. - The Secretary concerned shall enter into collateral incentive agreements with eligible entities in which the Secretary makes an investment

under this section to ensure that a suitable preference will be afforded members of the armed forces and their dependents in the lease or purchase, as the case may be, of a reasonable number of the housing units covered by the investment.

~~(e) CONGRESSIONAL NOTIFICATION REQUIRED. - Amounts in the Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improvement Fund may be used to make a cash investment under this section in an eligible entity only after the end of the 30-day period beginning on the date the Secretary of Defense submits written notice of, and justification for, the investment to the appropriate committees of Congress or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notice and justification is provided in an electronic medium pursuant to section 480 of this title~~.

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§ 2884. Project r~~R~~eports

(a) ~~PROJECT~~ REPORTS.~~—(1)~~The Secretary of Defense shall transmit to the appropriate committees of Congress a report describing –

(1 ~~A~~) each contract for the acquisition or construction of family housing units or unaccompanied housing units that the Secretary proposes to solicit under this subchapter; and

(2 ~~B~~) each conveyance or lease proposed under section 2878 of this title.

~~(2)~~ (b) CONTENT OF REPORTS.—(1) For each proposed contract, conveyance, or lease and the intended method of participation of the United States in the contract, conveyance, or lease and provide a justification of such method of participation.

(~~3~~2)(A) In the case of a contract described in ~~paragraph (1)~~ subsection (a) proposed to be entered into with a private party, the report shall specify whether the contract will or may include a guarantee (including the making of mortgage or rental payments) by the Secretary to the private party in the event of –

(i) the closure or realignment of the installation for which housing will be provided under the contract;

(ii) a reduction in force of units stationed at such installation; or

(iii) the extended deployment of units stationed at such installation.

(B) If the contract will or may include such a guarantee, the report shall also –

(i) describe the nature of the guarantee; and

(ii) assess the extent and likelihood, if any, of the liability of the United States with respect to the guarantee.

(~~4~~ 3) The report shall be submitted not later than 30 days before the date on which the Secretary issues the contract solicitation or offers the conveyance or lease.

~~(b) ANNUAL REPORTS. - The Secretary of Defense shall include each year in the materials that the Secretary submits to Congress in support of the budget submitted by the President pursuant to section 1105 of title 31 the following:~~

~~(1) A report on the expenditures and receipts during the preceding fiscal year covering the Funds established under section 2883 of this title.~~

(2) A methodology for evaluating the extent and effectiveness of the use of the authorities under this subchapter during such preceding fiscal year, and such recommendations as the Secretary considers necessary for improving the extent and effectiveness of the use of such authorities in the future.

(3) A review of activities of the Secretary under this subchapter during such preceding fiscal year, shown for military family housing, military unaccompanied housing, dual military family housing and military unaccompanied housing, and ancillary supporting facilities.

(4) If a contract for the acquisition or construction of military family housing, military unaccompanied housing, or dual military family housing and military unaccompanied housing entered into during the preceding fiscal year did not include the acquisition or construction of the types of ancillary supporting facilities specifically referred to in section 2871(1) of this title, a explanation of the reasons why such ancillary supporting facilities were not included.

(5) A report setting forth, by armed force—

(A) an estimate of the amounts of basic allowance for housing under section 403 of title 37 that will be paid, during the current fiscal year and the fiscal year for which the budget is submitted, to members of the armed forces living in housing provided under the authorities in this subchapter; and

(B) the number of units of military family housing and military unaccompanied housing upon which the estimate under subparagraph (A) for the current fiscal year and the next fiscal year is based.

(6) A description of the Secretary's plans for housing privatization activities under this subchapter:

(A) during the fiscal year for which the budget is submitted; and

(B) during the period covered by the then-current future-years defense plan under section 221 of this title.

(7) A report on best practices for the execution of housing privatization initiatives, including—

(A) effective means to track and verify proper performance, schedule, and cash flow;

(B) means of overseeing the actions of bondholders to properly monitor construction progress and construction draws;

(C) effective structuring of transactions to ensure the United States Government has adequate abilities to oversee project owner performance;

(D) ensuring that notices to proceed on new work are not issued until proper bonding is in place; and

(E) such other topics that are identified as pertinent by the Department of Defense.

(8) A report identifying each family housing unit acquired or constructed under this subchapter that is used, or intended to be used, as quarters for a general officer or flag officer and for which the total operation, maintenance, and repair costs for the unit

~~exceeded $50,000. For each housing unit so identified, the report shall also include the total of such operation, maintenance, and repair costs.~~

§ 2885. Oversight and accountability for privatization projects

(a) OVERSIGHT AND ACCOUNTABILITY MEASURES.—Each Secretary concerned shall prescribe regulations to effectively oversee and manage military housing privatization projects carried out under this subchapter. The regulations shall include the following requirements for each privatization project:

(1) The installation asset manager shall conduct monthly site visits and provide quarterly reports on the progress of the construction or renovation of the housing units. The reports shall be submitted quarterly to the assistant secretary for installations and environment of the respective military department.

(2) The installation asset manager, and, as applicable, the resident construction manager, privatization asset manager, bondholder representative, project owner, developer, general contractor, and construction consultant for the project shall conduct meetings to ensure that the construction or renovation of the units meets performance and schedule requirements and that appropriate operating and ground lease agreements are in place and adhered to.

(3) ~~If a project~~ <u>In the case of a project for new construction, if the project</u> is 90 days or more behind schedule or otherwise appears to be substantially failing to adhere to the obligations or milestones under the contract, the assistant secretary for installations and environment of the respective military department shall submit a notice of deficiency to the Deputy Under Secretary of Defense (Installations and Environment), the Secretary concerned, the managing member, and the trustee for the project.

(4) (A) Not later than 15 days after the submittal of a notice of deficiency under paragraph (3), the Secretary concerned or designated representative shall submit to the project owner, developer, or general contractor responsible for the project a summary of deficiencies related to the project.

(B) If the project owner, developer, or general contractor responsible for the privatization project is unable, within 60 days after receiving a notice of deficiency under subparagraph (A), to make progress on the issues outlined in such notice, the Secretary concerned shall notify the congressional defense committees of the status of the project, and shall provide a recommended course of action to correct the problems.

(b) ***

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§ 2916. Sale of electricity from alternate energy and cogeneration production facilities

(a) The Secretary of a military department may sell, contract to sell, or authorize the sale by a contractor to a public or private utility company of electrical energy generated from alternate energy or cogeneration type production facilities which are under the jurisdiction (or

produced on land which is under the jurisdiction) of the Secretary concerned. The sale of such energy shall be made under such regulations, for such periods, and at such prices as the Secretary concerned prescribes consistent with the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.).

(b)(1) Proceeds from sales under subsection (a) shall be credited to the appropriation account currently available to the military department concerned for the supply of electrical energy.

(2) Subject to the availability of appropriations for this purpose, proceeds credited under paragraph (1) may be used to carry out military construction projects under the energy performance plan developed by the Secretary of Defense under section 2911(b) of this title, including minor military construction projects authorized under section 2805 of this title that are designed to increase energy conservation.

~~(c) Before carrying out a military construction project described in subsection (b) using proceeds from sales under subsection (a), the Secretary concerned shall notify Congress in writing of the project, the justification for the project, and the estimated cost of the project. The project may be carried out only after the end of the 21-day period beginning on the date the notification is received by Congress or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title~~.

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Ike Skelton National Defense Authorization Act for Fiscal Year 2011
(Public Law 111-383)

SEC. 892. PRICE TREND ANALYSIS FOR SUPPLIES AND EQUIPMENT PURCHASED BY THE DEPARTMENT OF DEFENSE.

(a) PRICE TREND ANALYSIS PROCEDURES.—

(1) IN GENERAL—The Secretary of Defense shall develop and implement procedures that, to the maximum extent practicable, provide for the collection and analysis of information on price trends for covered supplies and equipment purchased by the Department of Defense. The procedures shall include an automated process for identifying categories of covered supplies and equipment described in paragraph (2) that have experienced significant escalation in prices.

(2) CATEGORY OF COVERED SUPPLIES AND EQUIPMENT.—A category of covered supplies and equipment referred to in paragraph (1) consists of covered supplies and equipment that have the same National Stock Number, are in a single Federal Supply Group or Federal Supply Class, are provided by a single contractor, or are otherwise logically grouped for the purpose of analyzing information on price trends.

(3) REQUIREMENT TO EXAMINE CAUSES OF ESCALATION.—An analysis conducted pursuant to paragraph (1) shall include, for any category in which significant escalation in prices is identified, a more detailed examination of the causes of escalation for such prices within the category and whether such price escalation is consistent across the Department of Defense.

(4) REQUIREMENT TO ADDRESS UNJUSTIFIED ESCALATION.—The head of a Defense Agency or the Secretary of a military department shall take appropriate action to address any unjustified escalation in prices being paid for items procured by that agency or military department as identified in an analysis conducted pursuant to paragraph (1).

~~(b) ANNUAL REPORT.—Not later than April 1 of each year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the analyses of price trends that were conducted for categories of covered supplies and equipment during the preceding fiscal year under the procedures implemented pursuant to paragraph (1). The report shall include a description of the actions taken to identify and address any unjustified price escalation for the categories of items.~~

(c) DEFINITIONS.—In this section:

(1) SUPPLIES AND EQUIPMENT.—The term `supplies and equipment' means items classified as supplies and equipment under the Federal Supply Classification System.

(2) COVERED SUPPLIES AND EQUIPMENT.—The term `covered supplies and equipment' means all supplies and equipment purchased by the Department of Defense. The term does not include major weapon systems but does include individual parts and components purchased as spare or replenishment parts for such weapon systems.

(d) SUNSET DATE.—This section shall not be in effect on and after April 1, 2015.

Duncan Hunter National Defense Authorization Act for Fiscal Year 2009
(Public Law 110-417)

SEC. 354. [10 U.S.C. 221 note] ~~DISPLAY OF ANNUAL BUDGET REQUIREMENTS FOR AIR SOVEREIGNTY ALERT MISSION.~~

~~(a) SUBMISSION WITH ANNUAL BUDGET JUSTIFICATION DOCUMENTS.—For fiscal year 2010 and each subsequent fiscal year, the Secretary of Defense shall submit to the President, for consideration by the President for inclusion with the budget materials submitted to Congress under section 1105(a) of title 31, United States Code, a consolidated budget justification display that covers all programs and activities of the Air Sovereignty Alert mission of the Air Force.~~

~~(b) REQUIREMENTS FOR BUDGET DISPLAY.—The budget display under subsection (a) for a fiscal year shall include for such fiscal year the following:~~

~~(1) The funding requirements for the Air Sovereignty Alert mission, and the associated Command and Control mission, including such requirements for—~~

~~(A) military personnel costs;~~

~~(B) flying hours; and~~

~~(C) any other associated mission costs.~~

~~(2) The amount in the budget for the Air Force for each of the items referred to in paragraph (1).~~

~~(3) The amount in the budget for the Air National Guard for each such item~~.

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SEC. 903. [10 U.S.C. 2228 note] CORROSION CONTROL AND PREVENTION EXECUTIVES FOR THE MILITARY DEPARTMENTS.

(a) REQUIREMENT TO DESIGNATE CORROSION CONTROL AND PREVENTION EXECUTIVE.—***

(b) DUTIES.—(1) ***

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~~(5) The corrosion control and prevention executive of a military department shall submit an annual report, not later than December 31 of each year, to the Secretary of Defense containing recommendations pertaining to the corrosion control and prevention program of the military department, including corrosion-related funding levels to carry out all of the duties of the executive under this section.~~

(5) Not later than December 31 each year, the corrosion control and prevention executive of a military department shall submit to the Secretary of Defense a report containing recommendations pertaining to the corrosion control and prevention program of the military department. The report each year shall include recommendations for the funding levels necessary for the executive to carry out the duties of the executive under this section.

SEC. 1047. [10 U.S.C. 2366b note] REVIEW OF BANDWIDTH CAPACITY REQUIREMENTS OF THE DEPARTMENT OF DEFENSE AND THE INTELLIGENCE COMMUNITY.

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(d) FORMAL REVIEW PROCESS FOR BANDWIDTH REQUIREMENTS.—

~~(1) IN GENERAL.—~~The Secretary of Defense and he Director of National Intelligence shall, as part of the Milestone B or Key Decision Point B approval process for any major defense acquisition program or major system acquisition program, establish a formal review process to ensure that—

(~~A~~1) the bandwidth requirements needed to support such program are or will be met; and

(~~B~~2) a determination will be made with respect to how to meet the bandwidth requirements for such program.

~~(2) Reports.--Not later than January 1 of each year, the Secretary of Defense and the Director of National Intelligence shall each submit to the congressional defense committees, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a report on any determinations made under paragraph (1) with respect to meeting the bandwidth requirements for major defense acquisition programs and major system acquisition programs during the preceding fiscal year.~~

National Defense Authorization Act for Fiscal Year 2008
(Public Law 110-181)

SEC. 911. [10 U.S.C. 2271 note] SPACE PROTECTION STRATEGY.

(a) SENSE OF CONGRESS.—It is the Sense of Congress that the United States should place greater priority on the protection of national security space systems.

(b) STRATEGY.—The Secretary of Defense, in conjunction with the Director of National Intelligence, shall develop a strategy, to be known as the Space Protection Strategy, for the development and fielding by the United States of the capabilities that are necessary to ensure freedom of action in space for the United States.

(c) MATTERS INCLUDED.—The strategy required by subsection (b) shall include each of the following:

(1) An identification of the threats to, and the vulnerabilities of, the national security space systems of the United States.

(2) A description of the capabilities currently contained in the program of record of the Department of Defense and the intelligence community that ensure freedom of action in space.

(3) For each period covered by the strategy, a description of the capabilities that are needed for the period, including—

(A) the hardware, software, and other materials or services to be developed or procured;

(B) the management and organizational changes to be achieved; and

(C) concepts of operations, tactics, techniques, and procedures to be employed.

(4) For each period covered by the strategy, an assessment of the gaps and shortfalls between the capabilities that are needed for the period and the capabilities currently contained in the program of record.

(5) For each period covered by the strategy, a comprehensive plan for investment in capabilities that identifies specific program and technology investments to be made in that period.

(6) A description of the current processes by which the systems protection requirements of the Department of Defense and the intelligence community are addressed in space acquisition programs and during key milestone decisions, an assessment of the adequacy of those processes, and an identification of the actions of the Department and the intelligence community for addressing any inadequacies in those processes.

(7) A description of the current processes by which the Department of Defense and the intelligence community program and budget for capabilities (including capabilities that are incorporated into single programs and capabilities that span multiple programs), an assessment of the adequacy of those processes, and an identification of the actions of the Department and the intelligence community for addressing any inadequacies in those processes.

(8) A description of the organizational and management structure of the Department of Defense and the intelligence community for addressing policy, planning, acquisition, and operations with respect to capabilities, a description of the roles and responsibilities of each organization, and an identification of the actions of the Department and the intelligence community for addressing any inadequacies in that structure.

(d) PERIODS COVERED.—The strategy required by subsection (b) shall cover the following periods:

(1) Fiscal years 2008 through 2013.

(2) Fiscal years 2014 through 2019.

(3) Fiscal years 2020 through 2025.

(e) DEFINITIONS.—In this section—

(1) the term ‘‘capabilities’’ means space, airborne, and ground systems and capabilities for space situational awareness and for space systems protection; and

(2) the term ‘‘intelligence community’’ has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(f) REPORT; BIENNIAL UPDATE.—

(1) REPORT.—Not later than six months after the date of the enactment of this Act, the Secretary of Defense, in conjunction with the Director of National Intelligence, shall submit to Congress a report on the strategy required by subsection (b), including each of the matters required by subsection (c).

~~(2) BIENNIAL UPDATE.—Not later than March 15 of each even-numbered year after 2008, the Secretary of Defense, in conjunction with the Director of National Intelligence, shall submit to Congress an update to the report required by paragraph (1).~~

(3) CLASSIFICATION.—The report required by paragraph (1), and each update required by paragraph (2), shall be in unclassified form, but may include a classified annex.

(g) CONFORMING REPEAL.—Section 911 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3405; 10 U.S.C. 2271 note) is repealed.

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SEC. 1074. [10 U.S.C. 113 note] PROTECTION OF CERTAIN INDIVIDUALS.

(a) PROTECTION FOR DEPARTMENT LEADERSHIP.—The Secretary of Defense, under regulations prescribed by the Secretary and in accordance with guidelines approved by the Secretary and the Attorney General, may authorize qualified members of the Armed Forces and qualified civilian employees of the Department of Defense to provide physical protection and personal security within the United States to the following persons who, by nature of their positions, require continuous security and protection:

(1) Secretary of Defense.

(2) Deputy Secretary of Defense.

(3) Chairman of the Joint Chiefs of Staff.

(4) Vice Chairman of the Joint Chiefs of Staff.

(5) Secretaries of the military departments.

(6) Chiefs of the Services.

(7) Commanders of combatant commands.

(b) PROTECTION FOR ADDITIONAL PERSONNEL.—

(1) AUTHORITY TO PROVIDE.—The Secretary of Defense, under regulations prescribed by the Secretary and in accordance with guidelines approved by the Secretary and the Attorney General, may authorize qualified members of the Armed Forces and qualified civilian employees of the Department of Defense to provide physical protection and personal security within the United States to individuals other than individuals the Secretary determines that such protection and security are necessary because—

(A) there is an imminent and credible threat to the safety of the individual for whom protection is to be provided; or

(B) compelling operational considerations make such protection essential to the conduct of official Department of Defense business.

(2) PERSONNEL.—Individuals authorized to receive physical protection and personal security under this subsection include the following:

(A) Any official, military member, or employee of the Department of Defense.

(B) A former or retired official who faces serious and credible threats arising from duties performed while employed by the Department for a period of up to two years beginning on the date on which the official separates from the Department.

(C) A head of a foreign state, an official representative of a foreign government, or any other distinguished foreign visitor to the United States who is primarily conducting official business with the Department of Defense.

(D) Any member of the immediate family of a person authorized to receive physical protection and personal security under this section.

(E) An individual who has been designated by the President, and who has received the advice and consent of the Senate, to serve as Secretary of Defense, but who has not yet been appointed as Secretary of Defense.

(3) LIMITATION ON DELEGATION.—The authority of the Secretary of Defense to authorize the provision of physical protection and personal security under this subsection may be delegated only to the Deputy Secretary of Defense.

(4) REQUIREMENT FOR WRITTEN DETERMINATION.—A determination of the Secretary of Defense to provide physical protection and personal security under this subsection shall be in writing, shall be based on a threat assessment by an appropriate law enforcement, security, or intelligence organization, and shall include the name and title of the officer, employee, or other individual affected, the reason for such determination, the duration of the authorized protection and security for such officer, employee, or individual, and the nature of the arrangements for the protection and security.

(5) DURATION OF PROTECTION.—

(A) INITIAL PERIOD OF PROTECTION.—After making a written determination under paragraph (4), the Secretary of Defense may provide protection and security to an individual under this subsection for an initial period of not more than 90 calendar days.

(B) SUBSEQUENT PERIOD.—If, at the end of the period that protection and security is provided to an individual under subsection (A), the Secretary determines that a condition described in subparagraph (A) or (B) of paragraph (1) continues to exist with respect to the individual, the Secretary may extend the period that such protection and security is provided for additional 60-day periods. The Secretary shall review such a determination at the end of each 60-day period to determine whether to continue to provide such protection and security.

(C) REQUIREMENT FOR COMPLIANCE WITH REGULATIONS.—Protection and personal security provided under subparagraph (B) shall be provided in accordance with the regulations and guidelines referred to in paragraph (1).

(6) SUBMISSION TO CONGRESS.—

(A) IN GENERAL.—~~The~~ Except as provided in subparagraph (D), the Secretary of Defense shall submit to the congressional defense committees each determination made under paragraph (4) to provide protection and security to an individual and of each determination under paragraph (5)(B) to extend such protection and security, together with the justification for such determination, not later than 15 days after the date on which the determination is made.

(B) FORM OF REPORT.—A report submitted under subparagraph (A) may be made in classified form.

(C) REGULATIONS AND GUIDELINES.—The Secretary of Defense shall submit to the congressional defense committees the regulations and

guidelines prescribed pursuant to paragraph (1) not less than 20 days before the date on which such regulations take effect.

(D) EXCEPTIONS.—Subparagraph (A) does not apply in the case of—

(i) an individual described in paragraph (2)(C) who is otherwise sponsored by the Secretary of Defense, the Deputy Secretary of Defense, the Chairman of the Joint Chiefs of Staff, or the Vice Chairman of the Joint Chiefs of Staff; or

(ii) an individual described in paragraph (2)(E).

(c) DEFINITIONS.—In this section:

(1) CONGRESSIONAL DEFENSE COMMITTEES.—The term ‘‘congressional defense committees’’ means the Committee on Appropriations and the Committee on Armed Services of the Senate and the Committee on Appropriations and the Committee on Armed Services of the House of Representatives.

(2) QUALIFIED MEMBERS OF THE ARMED FORCES AND QUALIFIED CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE.— The terms ‘‘qualified members of the Armed Forces’’ and ‘‘qualified civilian employees of the Department of Defense’’ refer collectively to members or employees who are assigned to investigative, law enforcement, or security duties of any of the following:

(A) The Army Criminal Investigation Command.

(B) The Naval Criminal Investigative Service.

(C) The Air Force Office of Special Investigations.

(D) The Defense Criminal Investigative Service.

(E) The Pentagon Force Protection Agency.

(d) CONSTRUCTION.—

(1) NO ADDITIONAL LAW ENFORCEMENT OR ARREST AUTHORITY.—Other than the authority to provide protection and security under this section, nothing in this section may be construed to bestow any additional law enforcement or arrest authority upon the qualified members of the Armed Forces and qualified civilian employees of the Department of Defense.

(2) POSSE COMITATUS.—Nothing in this section shall be construed to abridge section 1385 of title 18, United States Code.

(3) AUTHORITIES OF OTHER DEPARTMENTS.—Nothing in this section may be construed to preclude or limit, in any way, the express or implied powers of the Secretary of Defense or other Department of Defense officials, or the duties and authorities of the Secretary of State, the Director of the United States Secret Service, the Director of the United States Marshals Service, or any other Federal law enforcement agency.

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SEC. 2864. [10 U.S.C. 2911 note] REPORTING REQUIREMENTS RELATING TO RENEWABLE ENERGY USE BY DEPARTMENT OF DEFENSE TO MEET DEPARTMENT ELECTRICITY NEEDS.

(a) INITIAL REPORT.—Not later than 120 days after the date of the enactment of this Act [Jan. 28, 2008], the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the congressional defense committees a report containing the following information:

(1) The extent to which energy from renewable energy sources is used to meet the electricity needs of the Department of Defense, to be stated as a percentage of total facility electricity use for the previous fiscal year.

(2) The extent to which energy from renewable energy sources was procured through alternative financing methods, to be stated as a percentage of total renewable energy procurement and as a dollar amount for the previous fiscal year.

(3) The extent to which energy from renewable energy sources was procured through the use of appropriated funds, to be stated as a percentage of total renewable energy procurement and as a dollar amount for the previous fiscal year.

(4) A graphical illustration of energy use from renewable energy sources by the Department as a percentage of total facility electricity use over time, starting no later than fiscal year 2000 and running through fiscal year 2025, including projected future trends in renewable energy consumption through fiscal year 2025 in order to meet the goals for renewable energy set forth in section 2911(e) of title 10, United States Code, or other goals, as appropriate.

(b) SUBSEQUENT REPORTS.—For fiscal year 2008 and each fiscal year thereafter, the information required by paragraphs (1) through (4) of subsection (a) shall be included in the Annual Energy Management Report prepared by the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(c) RENEWABLE ENERGY SOURCES DEFINED.—In this section, the term ''renewable energy sources'' has the meaning given that term in section 203(b) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b)).

John Warner National Defense Authorization Act for Fiscal Year 2007
(Public Law 109-364)

SEC. 226. ANNUAL REPORTS ON TRANSITION OF BALLISTIC MISSILE DEFENSE PROGRAMS TO THE MILITARY DEPARTMENTS.

(a) REPORT REQUIRED.—Not later than March 1, 2007, and annually thereafter through 2013, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the congressional defense committees a report on the plans of the Department of Defense for the

~~transition of missile defense programs from the Missile Defense Agency to the military departments.~~

~~(b) SCOPE OF REPORTS- Each report required by subsection (a) shall cover the period covered by the future-years defense program that is submitted under section 221 of title 10, United States Code, in the year in which such report is submitted.~~

~~(c) ELEMENTS- Each report required by subsection (a) shall include the following:~~

~~(1) An identification of --~~

~~(A) the missile defense programs planned to be transitioned from the Missile Defense Agency to the military departments; and~~

~~(B) the missile defense programs, if any, not planned for transition to the military departments.~~

~~(2) The schedule for transition of each missile defense program planned to be transitioned to a military department, and an explanation of such schedule.~~

~~(3) A description of --~~

~~(A) the status of the plans of the Missile Defense Agency and the military departments for the transition of missile defense programs from that agency to the military departments; and~~

~~(B) the status of any agreement between the Missile Defense Agency and one or more of the military departments on the transition of any such program from that agency to the military departments, including any agreement on the operational test criteria that must be achieved before such transition.~~

~~(4) An identification of the entity of the Department of Defense (whether the Missile Defense Agency, a military department, or both) that will be responsible for funding each missile defense program to be transitioned to a military department, and at what date.~~

~~(5) A description of the type of funds that will be used (whether funds for research, development, test, and evaluation, procurement, military construction, or operation and maintenance) for each missile defense program to be transitioned to a military department.~~

~~(6) An explanation of the number of systems planned for procurement for each missile defense program to be transitioned to a military department, and the schedule for procurement of each such system.~~

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SEC. 323. PRIORITIZATION OF FUNDS FOR EQUIPMENT READINESS AND STRATEGIC CAPABILITY.

(a) PRIORITIZATION OF FUNDS.—***

(b) SUBMISSION OF BUDGET INFORMATION.—***

2005.

~~(c) ANNUAL REPORT ON ARMY PROGRESS.—On the date on which the President submits to Congress the budget for a fiscal year under section 1105 of title 31, United States Code, the Secretary of the Army shall submit to the congressional defense committees a report setting forth the progress of the Army in meeting the requirements of subsection (a). Any information required to be included in the report concerning funding priorities under paragraph (1) or (2) of subsection (a) shall be itemized by active duty component and reserve component. Each such report shall include the following:~~

~~(1) A complete itemization of the requirements for the funding priorities in subsection (a), including an itemization for all types of modular brigades and an itemization for the replacement of equipment withdrawn or diverted from the reserve component for use in the global war on terrorism.~~

~~(2) A list of any shortfalls that exist between available funding, equipment, supplies, and industrial capacity and required funding, equipment, supplies, and industrial capacity in accordance with the funding priorities in subsection (a).~~

~~(3) A list of the requirements for the funding priorities in subsection (a) that the Army has included in the budget for that fiscal year, including a detailed listing of the type, quantity, and cost of the equipment the Army plans to repair, recapitalize, or procure, set forth by appropriations account and Army component.~~

~~(4) An assessment of the progress made during that fiscal year toward meeting the overall requirements of the funding priorities in subsection (a).~~

~~(5) A schedule for meeting the requirements of subsection (a).~~

~~(6) A description of how the Army defines costs associated with modularity versus the costs associated with modernizing equipment platforms and the reset (repair, recapitalization, or replacement) of equipment used during the global war on terrorism, including the funding expended on, and the future funding required for, such reset requirements.~~

~~(7) A complete itemization of the amount of funds expended to date on the modular brigades.~~

~~(8) The results of Army assessments of modular force capabilities, including lessons learned from existing modular units and any modifications that have been made to modularity.~~

~~(9) The comments of the Chief of the National Guard Bureau and the Chief of the Army Reserve on each of the items described in paragraphs (1) through (8).~~

(d) ANNUAL COMPTROLLER GENERAL REPORT ON ARMY PROGRESS.—***

(e) TERMINATION OF REPORT REQUIREMENTS.—***

SEC. 817. [10 U.S.C. 2306a note] GRANTS OF EXCEPTIONS TO COST OR PRICING DATA CERTIFICATION REQUIREMENTS AND WAIVERS OF COST ACCOUNTING STANDARDS.

(a) GUIDANCE FOR EXCEPTIONS IN EXCEPTIONAL CIRCUMSTANCES.— Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall issue guidance on the circumstances under which it is appropriate to grant an exceptional case exception or waiver with respect to certified cost and pricing data and cost accounting standards.

(b) DETERMINATION REQUIRED FOR EXCEPTIONAL CASE EXCEPTION OR WAIVER.—The guidance shall, at a minimum, include a limitation that a grant of an exceptional case exception or waiver is appropriate with respect to a contract, subcontract, or (in the case of submission of certified cost and pricing data) modification only upon a determination that—

(1) the property or services cannot reasonably be obtained under the contract, subcontract, or modification, as the case may be, without the grant of the exception or waiver;

(2) the price can be determined to be fair and reasonable without the submission of certified cost and pricing data or the application of cost accounting standards, as the case may be; and

(3) there are demonstrated benefits to granting the exception or waiver.

(c) APPLICABILITY OF NEW GUIDANCE.—The guidance issued under subsection (a) shall apply to each exceptional case exception or waiver that is granted on or after the date on which the guidance is issued.

~~(d) ANNUAL REPORT ON BOTH COMMERCIAL ITEM AND EXCEPTIONAL CASE EXCEPTIONS AND WAIVERS.—~~

~~(1) The Secretary of Defense shall transmit to the congressional defense committees promptly after the end of each fiscal year a report on commercial item exceptions, and exceptional case exceptions and waivers, described in paragraph (2) that were granted during that fiscal year.~~

~~(2) The report for a fiscal year shall include—~~

~~(A) with respect to any commercial item exception granted in the case of a contract, subcontract, or contract or subcontract modification that is expected to have a price of $15,000,000 or more, an explanation of the basis for the determination that the products or services to be purchased are commercial items, including an identification of the specific steps taken to ensure price reasonableness;~~

~~(B) with respect to any exceptional case exception or waiver granted in the case of a contract or subcontract that is expected to have a value of $15,000,000 or more, an explanation of the basis for the determination described in subsection (b), including an identification of the specific steps taken to ensure that the price was fair and reasonable; and~~

~~(C) with respect to any determination pursuant to section 2304a(d)(3)(D) of title 10, United States Code, that because of exceptional circumstances it is necessary in the public interest to award a task or delivery order contract with an estimated value in excess of $100,000,000 to a single source, an explanation of the basis for the determination.~~

(e) DEFINITIONS.—In this section:

(1) The term ''exceptional case exception or waiver'' means either of the following:

(A) An exception pursuant to section 2306a(b)(1)(C) of title 10, United States Code, relating to submission of certified cost and pricing data.

(B) A waiver pursuant to section 26(f)(5)(B) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)(5)(B)), relating to the applicability of cost accounting standards to contracts and subcontracts.

~~(2) The term ''commercial item exception'' means an exception pursuant to section 2306a(b)(1)(B) of title 10, United States Code, relating to submission of certified cost and pricing data~~.

National Defense Authorization Act for Fiscal Year 2000
(Public Law 106-65)

SEC. 1409. [22 U.S.C. 2778 note]ENHANCEMENT OF ACTIVITIES OF DEFENSE THREAT REDUCTION AGENCY.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Oct. 5, 1999], the Secretary of Defense shall prescribe regulations to—

(1) authorize the personnel of the Defense Threat Reduction Agency (DTRA) who monitor satellite launch campaigns overseas to suspend such campaigns at any time if the suspension is required for purposes of the national security of the United States;

(2) ensure that persons assigned as space launch campaign monitors are provided sufficient training and have adequate experience in the regulations prescribed by the Secretary of State known as the ITAR and have significant experience and expertise with satellite technology, launch vehicle technology, and launch operations technology;

(3) ensure that adequate numbers of such monitors are assigned to space launch campaigns so that 24-hour, 7-day per week coverage is provided;

(4) take steps to ensure, to the maximum extent possible, the continuity of service by monitors for the entire space launch campaign period (from satellite marketing to launch and, if necessary, completion of a launch failure analysis);

(5) adopt measures designed to make service as a space launch campaign monitor an attractive career opportunity;

(6) allocate funds and other resources to the Agency at levels sufficient to prevent any shortfalls in the number of such personnel;

(7) establish mechanisms in accordance with the provisions of section 1514(a)(2)(A) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 2175; 22 U.S.C. 2778 note) that provide for—

(A) the payment to the Department of Defense by the person or entity receiving the launch monitoring services concerned, before the beginning of a fiscal year, of an amount equal to the amount estimated to be required by the Department to monitor the launch campaigns during that fiscal year;

(B) the reimbursement of the Department of Defense, at the end of each fiscal year, for amounts expended by the Department in monitoring the launch campaigns in excess of the amount provided under subparagraph (A); and

(C) the reimbursement of the person or entity receiving the launch monitoring services if the amount provided under subparagraph (A) exceeds the amount actually expended by the Department of Defense in monitoring the launch campaigns;

(8) review and improve guidelines on the scope of permissible discussions with foreign persons regarding technology and technical information, including the technology and technical information that should not be included in such discussions;

(9) provide, in conjunction with other Federal agencies, on at least an annual basis, briefings to the officers and employees of United States commercial satellite entities on United States export license standards, guidelines, and restrictions, and encourage such officers and employees to participate in such briefings;

(10) establish a system for—

(A) the preparation and filing by personnel of the Agency who monitor satellite launch campaigns overseas of detailed reports of all relevant activities observed by such personnel in the course of monitoring such campaigns;

(B) the systematic archiving of reports filed under subparagraph (A); and

(C) the preservation of such reports in accordance with applicable laws; and

(11) establish a counterintelligence program within the Agency as part of its satellite launch monitoring program.

~~(b) ANNUAL REPORT ON IMPLEMENTATION OF SATELLITE TECHNOLOGY SAFEGUARDS.—(1) The Secretary of Defense and the Secretary of State shall each submit to Congress each year, as part of the annual report for that year under section 1514(a)(8) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 [Pub. L. 105–261, 22 U.S.C. 2778 note], the following:~~

~~(A) A summary of the satellite launch campaigns and related activities monitored by the Defense Threat Reduction Agency during the preceding fiscal year.~~

~~(B) A description of any license infractions or violations that may have occurred during such campaigns and activities.~~

~~(C) A description of the personnel, funds, and other resources dedicated to the satellite launch monitoring program of the Agency during that fiscal year.~~

~~(D) An assessment of the record of United States satellite makers in cooperating with Agency monitors, and in complying with United States export control laws, during that fiscal year.~~

~~(2) Each report under paragraph (1) shall be submitted in classified form and unclassified form.~~

Strom Thurmond National Defense Authorization Act for Fiscal Year 1999
(Public Law 105-261)

SEC. 1101. [5 U.S.C. 3104 note] DEFENSE ADVANCED RESEARCH PROJECTS AGENCY EXPERIMENTAL PERSONNEL MANAGEMENT PROGRAM FOR TECHNICAL PERSONNEL.

(a) PROGRAM AUTHORIZED.—During the program period specified in subsection (e)(1), the Secretary of Defense may carry out a program of experimental use of the special personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for research and development projects administered by the Defense Advanced Research Projects Agency and research and development projects administered by laboratories designated for the program by the Secretary from among the laboratories of each of the military departments.

(b) SPECIAL PERSONNEL MANAGEMENT AUTHORITY.—Under the program, the Secretary may—

(1) without regard to any provision of title 5, United States Code, governing the appointment of employees in the civil service, appoint scientists and engineers from outside the civil service and uniformed services (as such terms are defined in section 2101 of such title) to—

(A) not more than 40 scientific and engineering positions in the Defense Advanced Research Projects Agency;

(B) not more than 40 scientific and engineering positions in the designated laboratories of each of the military services;

(C) not more than a total of 10 scientific and engineering positions in the National Imagery and Mapping Agency [National Geospatial-Intelligence Agency] and the National Security Agency; and

(D) not more than a total of 10 scientific and engineering positions in the Office of the Director of Defense Research and Engineering;

(2) prescribe the rates of basic pay for positions to which employees are appointed under paragraph (1) at rates not in excess of the maximum rate of basic pay authorized for senior-level positions under section 5376 of title 5, United States Code, as increased by locality-based comparability payments under section 5304 of such title,

notwithstanding any provision of such title governing the rates of pay or classification of employees in the executive branch; and

(3) pay any employee appointed under paragraph (1) payments in addition to basic pay within the limit applicable to the employee under subsection (d).

(c) LIMITATION ON TERM OF APPOINTMENT.—

(1) Except as provided in paragraph (2), the service of an employee under an appointment under subsection (b)(1) may not exceed 4 years.

(2) The Secretary may, in the case of a particular employee, extend the period to which service is limited under paragraph (1) by up to 2 years if the Secretary determines that such action is necessary to promote the efficiency of the Defense Advanced Research Projects Agency.

(d) LIMITATIONS ON ADDITIONAL PAYMENTS.—

(1) Subject to paragraph (3), the total amount of additional payments paid to an employee under subsection (b)(3) for any 12-month period may not exceed the lesser of the following amounts:

(A) $ 50,000 in fiscal year 2010, which may be adjusted annually thereafter by the Secretary, with a percentage increase equal to one-half of 1 percentage point less than the percentage by which the Employment Cost Index, published quarterly by the Bureau of Labor Statistics, for the base quarter of the year before the preceding calendar year exceeds the Employment Cost Index for the base quarter of the second year before the preceding calendar year.

(B) The amount equal to 50 percent of the employee's annual rate of basic pay.

(2) In paragraph (1), the term 'base quarter' has the meaning given that term in section 5302(3) of title 5, United States Code.

(3) Notwithstanding any other provision of this section or section 5307 of title 5, United States Code, no additional payments may be paid to an employee under subsection (b)(3) in any calendar year if, or to the extent that, the employee's total annual compensation in such calendar year will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3, United States Code.

(4) An employee appointed under the program is not eligible for any bonus, monetary award, or other monetary incentive for service under the appointment other than payments authorized by this section.

(e) PERIOD OF PROGRAM.—(1) The period for carrying out the program authorized under this section begins on October 17, 1998, and ends on September 30, 2014.

(2) After the termination of the program—

(A) no appointment may be made under paragraph (1) of subsection (b);

(B) a rate of basic pay prescribed under paragraph (2) of that subsection may not take effect for a position; and

(C) no period of service may be extended under subsection (c)(2).

(f) SAVINGS PROVISIONS.—***

~~(g) ANNUAL REPORT.—(1)(A) Not later than December 31 of each year in which the authority under this section is in effect, the Secretary of Defense shall submit to the committees of Congress specified in subparagraph (B) a report on the operation of this section. Each report shall cover the fiscal year that most recently ended before such December 31.~~

~~(B) The committees of Congress specified in this subparagraph are—~~

~~(i) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and~~

~~(ii) the Committee on Armed Services, the Committee on Oversight and Government Reform, and the Committee on Appropriations of the House of Representatives.~~

~~(2) The annual report shall contain, for the period covered by the report, the following:~~

~~(A) A detailed discussion of the exercise of authority under this section.~~

~~(B) The sources from which individuals appointed under subsection (b)(1) were recruited.~~

~~(C) The methodology used for identifying and selecting such individuals.~~

~~(D) Any additional information that the Secretary considers helpful for assessing the utility of the authority under this section.~~

National Defense Authorization Act for Fiscal Year 1991
(Public Law 101-510)

SEC. 4004. [10 U.S.C. 2391 note] CONTINUATION OF ECONOMIC ADJUSTMENT COMMITTEE.

(a) TERMINATION OR ALTERATION PROHIBITED- The Economic Adjustment Committee established in Executive Order 12049 (10 U.S.C. 111 note) may not be terminated and the duties of the Committee may not be significantly altered unless specifically authorized by a law.

(b) CHAIRMAN- ***

(c) EXECUTIVE COUNCIL.***

(d) DUTIES OF COMMITTEE- The Economic Adjustment Committee shall--

(1) coordinate and facilitate cooperative efforts among Federal agencies represented on the Committee to implement defense economic adjustment programs; and

(2) serve as an information clearinghouse for and between Federal, State, and local entities regarding their defense economic adjustment efforts~~; and~~.

~~(3) submit to the President and Congress, not later than December 1, 1991, and each December 1 thereafter, a report that--~~

~~(A) describes Federal economic adjustment programs available to communities, businesses, and groups of workers;~~

~~(B) describes the implementation of defense economic adjustment assistance during the preceding fiscal year; and~~

~~(C) specifies the number of communities, businesses, and workers affected by defense budget reductions during the preceding fiscal year and such number assisted by Federal economic adjustment programs during that fiscal year~~.

Defense Acquisition Improvement Act of 1986
(as contained in section 101(c) of Public Law 99-500 and identically enacted in section 101(c) of Public Law 99-591 and title IX of Public Law 99-661)

SEC. 908. [10 U.S.C. 2326 note] REQUIREMENTS RELATING TO UNDEFINITIZED CONTRACTUAL ACTIONS

(a) LIMITATION ON USE OF FUNDS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.—***

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~~(b) OVERSIGHT BY INSPECTOR GENERAL.—The Inspector General of the Department of Defense shall—~~

~~(1) periodically conduct an audit of contractual actions under the jurisdiction of the Secretary of Defense (with respect to the Defense Logistics Agency) and the Secretaries of the military departments; and~~

~~(2) after each audit, submit to Congress a report on the management of undefinitized contractual actions by each Secretary, including the amount of contractual actions under the jurisdiction of each Secretary that is represented by undefinitized contractual actions.~~

(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the application of subsections (a) and (b) for urgent and compelling considerations relating to national security or public safety if the Secretary notifies the Committees on Armed Services of the Senate and House of Representatives of such waiver before the end of the 30-day period beginning on the date that the waiver is made.

(d) [Omitted--Subsec. (d) added section 2326 of title 10, United States Code]

(e) DEFINITION.—For purposes of this section, the term 'undefinitized contractual action' has the meaning given such term in section 2326(g) of title 10, United States Code (as added by subsection (d)(1)).

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Foreign Assistance Act of 1961
(22 U.S.C. 2151 et seq.)

SEC. 516. [22 U.S.C. 2321j] AUTHORITY TO TRANSFER EXCESS DEFENSE ARTICLES

(a) AUTHORIZATION-The President is authorized to transfer excess defense articles under this section to countries for which receipt of such articles was justified pursuant to the annual congressional presentation documents for military assistance programs, or for programs under chapter 8 of part I of this Act, submitted under section 634 of this Act, or for which receipt of such articles was separately justified to the Congress, for the fiscal year in which the transfer is authorized.

(b) LIMITATIONS ON TRANSFERS- ***

(c) TERMS OF TRANSFERS—***

(d) WAIVER OF REQUIREMENT FOR REIMBURSEMENT OF DEPARTMENT OF DEFENSE EXPENSES-***

(e) TRANSPORTATION AND RELATED COSTS—***

(f) ADVANCE NOTIFICATION TO CONGRESS FOR TRANSFER OF CERTAIN EXCESS DEFENSE ARTICLES.—

(1) IN GENERAL- The President may not transfer ~~excess defense articles that are significant military equipment (as defined in section 47(9) of the Arms Export Control Act) or~~ excess defense articles valued (in terms of original acquisition cost) at $7,000,000 or more, under this section or under the Arms Export Control Act (22 U.S.C. 2751 et seq.) until 30 days after the date on which the President has provided notice of the proposed transfer to the congressional committees specified in section 634A(a) in accordance with procedures applicable to reprogramming notifications under that section.

(2) CONTENTS- Such notification shall include—

(A) a statement outlining the purposes for which the article is being provided to the country, including whether such article has been previously provided to such country;

(B) an assessment of the impact of the transfer on the military readiness of the United States;

(C) an assessment of the impact of the transfer on the national technology and industrial base and, particularly, the impact on opportunities of entities in the national technology and industrial base to sell new or used equipment to the countries to which such articles are to be transferred; and

(D) a statement describing the current value of such article and the value of such article at acquisition.

(g) AGGREGATE ANNUAL LIMITATION.—***

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Sec. 656. [22 U.S.C. 2416] ~~Annual foreign military training report.~~

~~(a) ANNUAL REPORT.~~

~~(1) IN GENERAL- Not later than January 31 of each year, the Secretary of Defense and the Secretary of State shall jointly prepare and submit to the appropriate congressional committees a report on all military training provided to foreign military personnel by the Department of Defense and the Department of State during the previous fiscal year and all such training proposed for the current fiscal year.~~

~~(2) EXCEPTION FOR CERTAIN COUNTRIES- Paragraph (1) does not apply to any NATO member, Australia, Japan, or New Zealand, unless one of the appropriate congressional committees has specifically requested, in writing, inclusion of such country in the report. Such request shall be made not later than 90 calendar days prior to the date on which the report is required to be transmitted.~~

~~(b) CONTENTS- The report described in subsection (a) shall include the following:~~

~~(1) For each military training activity, the foreign policy justification and purpose for the activity, the number of foreign military personnel provided training and their units of operation, and the location of the training.~~

~~(2) For each country, the aggregate number of students trained and the aggregate cost of the military training activities.~~

~~(3) With respect to United States personnel, the operational benefits to United States forces derived from each military training activity and the United States military units involved in each activity.~~

~~(c) FORM- The report described in subsection (a) shall be in unclassified form but may include a classified annex.~~

~~(d) AVAILABILITY ON INTERNET- All unclassified portions of the report described in subsection (a) shall be made available to the public on the Internet through the Department of State.~~

~~(e) DEFINITION- In this section, the term ''appropriate congressional committees'' means—~~

~~(1) the Committee on Appropriations and the Committee on International Relations of the House of Representatives; and~~

~~(2) the Committee on Appropriations and the Committee on Foreign Relations of the Senate.~~

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Arms Export Control Act

Sec. 36. [22 U.S.C. 2776] Reports on Commercial and Governmental Military Exports; Congressional Action.—(a) The President shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate not more than sixty days after the end of each ~~quarter~~ **fiscal year** an unclassified report (except that any material which was transmitted in classified form under subsection (b)(1) or (c)(1) of this section may be contained in a classified addendum to such report, and any letter of offer referred to in paragraph (1) of this subsection may be listed in such addendum unless such letter of offer has been the subject of an unclassified certification pursuant to subsection (b)(1) of this section, and any information provided under paragraph (11) of this subsection may also be provided in a classified addendum) containing –

(1) a listing of all letters of offer to sell any major defense equipment for $1,000,000 or more under this Act to each foreign country and international organization, by category, if such letters of offer have not been accepted or canceled;

(2) a listing of all such letters of offer that have been accepted during the fiscal year ~~in~~ **for** which such report is submitted, together with the total value of all defense articles and defense services sold to each foreign country and international organization during such fiscal year;

(3) the cumulative dollar amounts, by foreign country and international organization, of sales credit agreements under section 23 and guaranty agreements under section 24 made during the fiscal year ~~in~~ **for** which such report is submitted;

(4) a numbered listing of all licenses and approvals for the export to each foreign country and international organization during such fiscal year of commercially sold major defense equipment, by category, sold for $1,000,000 or more, together with the total value of all defense articles and defense services so licensed for each foreign country and international organization, setting forth with respect to the listed major defense equipment -

(A) the items to be exported under the license,

(B) the quantity and contract price of each such item to be furnished, and

(C) the name and address of the ultimate user of each such item;

(5) projections of the dollar amounts, by foreign country and international organization, of sales expected to be made under sections 21 and 22 in the ~~quarter of the fiscal year immediately following the quarter~~ **fiscal year** for which such report is submitted;

~~(6) a projection with respect to all sales expected to be made to each country and organization for the remainder of the fiscal year in which such report is transmitted;~~

(7) a description of each payment, contribution, gift, commission, or fee reported to the Secretary of State under section 2779 of this title, including (A) the name of the person who made such payment, contribution, gift, commission, or fee; (B) the name of any sales agent or other person to whom such payment, contribution, gift, commission, or fee was paid; (C) the date and amount of such payment, contribution, gift, commission, or fee; (D) a description of the sale in connection with which such payment, contribution,

gift, commission, or fee was paid; and (E) the identification of any business information considered confidential by the person submitting it which is included in the report;

(8) a listing of each sale under section 29 during the ~~quarter~~ **fiscal year** for which such report is made, specifying (A) the purchaser, (B) the United States Government department or agency responsible for implementing the sale, (C) an estimate of the dollar amount of the sale, and (D) a general description of the real property facilities to be constructed pursuant to such sale;

(9) a listing of the consents to third-party transfers of defense articles or defense services which were granted, during the ~~quarter~~ **fiscal year** for which such report is submitted, for purposes of section 3(a)(2) of this Act, the regulations issued under section 38 of this Act, or section 505(a)(1)(B) of Foreign Assistance Act of 1961, if the value (in terms of original acquisition cost) of the defense articles or defense services to be transferred is $1,000,000 or more;

(10) a listing of all munitions items (as defined in section 40(l)(1)) which were sold, leased, or otherwise transferred by the Department of Defense to any other department, agency, or other entity of the United States Government during the ~~quarter~~ **fiscal year** for which such report is submitted (including the name of the recipient Government entity and a discussion of what that entity will do with those munitions items) if -

(A) the value of the munitions items was $250,000 or more; or

(B) the value of all munitions items transferred to that Government department, agency, or other entity during that quarter was $250,000 or more;

excluding munitions items transferred (i) for disposition or use solely within the United States, or (ii) for use in connection with intelligence activities subject to reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.; relating to congressional oversight of intelligence activities);

(11) a report on all concluded government-to-government agreements regarding foreign coproduction of defense articles of United States origin and all other concluded agreements involving coproduction or licensed production outside of the United States of defense articles of United States origin (including coproduction memoranda of understanding or agreement) that have not been previously reported under this subsection, which shall include -

(A) the identity of the foreign countries, international organizations, or foreign firms involved;

(B) a description and the estimated value of the articles authorized to be produced, and an estimate of the quantity of the articles authorized to be produced;

(C) a description of any restrictions on third-party transfers of the foreign-manufactured articles; and

(D) if any such agreement does not provide for United States access to and verification of quantities of articles produced overseas and their disposition in the foreign country, a description of alternative measures and controls incorporated in

the coproduction or licensing program to ensure compliance with restrictions in the agreement on production quantities and third-party transfers; and

(12) a report on all exports of significant military equipment for which information has been provided pursuant to section 38(i).

For each letter of offer to sell under paragraphs (1) and (2), the report shall specify (i) the foreign country or international organization to which the defense article or service is offered or was sold, as the case may be; (ii) the dollar amount of the offer to sell or the sale and the number of defense articles offered or sold, as the case may be; (iii) a description of the defense article or service offered or sold, as the case may be; and (iv) the United States Armed Force or other agency of the United States which is making the offer to sell or the sale, as the case may be.

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Department of Energy Facilities Safeguards, Security, and Counterintelligence Enhancement Act of 1999
(Subtitle D of title XXXI of Public Law 106-65)

SEC. 3151. [42 U.S.C. 7383e] ~~ANNUAL REPORT BY THE PRESIDENT ON ESPIONAGE BY THE PEOPLE'S REPUBLIC OF CHINA.~~

~~(a) ANNUAL REPORT REQUIRED.—The President shall transmit to Congress an annual report on the steps being taken by the Department of Energy, the Department of Defense, the Federal Bureau of Investigation, the Central Intelligence Agency, and all other relevant executive departments and agencies to respond to espionage and other intelligence activities by the People's Republic of China, particularly with respect to—~~

~~(1) the theft of sophisticated United States nuclear weapons design information; and~~

~~(2) the targeting by the People's Republic of China of United States nuclear weapons codes and other national security information of strategic concern.~~

~~(b) INITIAL REPORT.—The first report under this section shall be transmitted not later than March 1, 2000.~~

Atomic Energy Defense Act
(50 U.S.C. 2501 et seq.)

SEC. 4507. [50 U.S.C. 2658] ~~REPORT ON COUNTERINTELLIGENCE AND SECURITY PRACTICES AT NATIONAL LABORATORIES.~~

~~(a) IN GENERAL.—Not later than March 1 of each year, the Secretary of Energy shall submit to the Congress a report for the preceding year on counterintelligence and security~~

~~practices at the facilities of the national laboratories (whether or not classified activities are carried out at the facility).~~

~~(b) CONTENT OF REPORT.—The report shall include, with respect to each national laboratory, the following:~~

~~(1) The number of employees, including full-time counterintelligence and security professionals and contractor employees.~~

~~(2) A description of the counterintelligence and security training courses conducted and, for each such course, any requirement that employees successfully complete that course.~~

~~(3) A description of each contract awarded that provides an incentive for the effective performance of counterintelligence or security activities.~~

~~(4) A description of the requirement that an employee report the travel to sensitive countries of that employee (whether or not the travel was for official business).~~

~~(5) The number of trips by individuals who traveled to sensitive countries, with identification of the sensitive countries visited.~~

~~(c) NATIONAL LABORATORY DEFINED.—In this section, the term "national laboratory" has the meaning given that term in section 4502(g)(3).~~

SEC. 4508. [50 U.S.C. 2659] ~~REPORT ON SECURITY VULNERABILITIES OF NATIONAL LABORATORY COMPUTERS.~~

~~(a) REPORT REQUIRED.—Not later than March 1 of each year, the National Counterintelligence Policy Board shall prepare a report on the security vulnerabilities of the computers of the national laboratories.~~

~~(b) PREPARATION OF REPORT.—In preparing the report, the National Counterintelligence Policy Board shall establish a so-called "red team" of individuals to perform an operational evaluation of the security vulnerabilities of the computers of one or more national laboratories, including by direct experimentation. Such individuals shall be selected by the National Counterintelligence Policy Board from among employees of the Department of Defense, the National Security Agency, the Central Intelligence Agency, the Federal Bureau of Investigation, and of other agencies, and may be detailed to the National Counterintelligence Policy Board from such agencies without reimbursement and without interruption or loss of civil service status or privilege.~~

~~(c) SUBMISSION OF REPORT TO SECRETARY OF ENERGY AND TO FBI DIRECTOR.—Not later than March 1 of each year, the report shall be submitted in classified and unclassified form to the Secretary of Energy and the Director of the Federal Bureau of Investigation.~~

~~(d) FORWARDING TO CONGRESSIONAL COMMITTEES.—Not later than 30 days after the report is submitted, the Secretary and the Director shall each separately forward that report, with the recommendations in classified and unclassified form of the Secretary or the Director, as applicable, in response to the findings of that report, to the following:~~

~~(1) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.~~

~~(2) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.~~

~~(e) FIRST REPORT.—The first report under this section shall be the report for the year 2000. That report shall cover each of the national laboratories.~~

~~(f) NATIONAL LABORATORY DEFINED.—In this section, the term "national laboratory" has the meaning given that term in section 4502(g)(3).~~

Intelligence Reform and Terrorism Prevention Act of 2004
(Public Law 108-458)

SEC. 3002. [50 U.S.C. 435c] SECURITY CLEARANCES; LIMITATIONS.

(a) DEFINITIONS.-In this section:

(1) CONTROLLED SUBSTANCE.-The term `controlled substance' has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(2) COVERED PERSON.-The term `covered person' means-

(A) an officer or employee of a Federal agency;

(B) a member of the Army, Navy, Air Force, or Marine Corps who is on active duty or is in an active status; and

(C) an officer or employee of a contractor of a Federal agency.

(3) RESTRICTED DATA.-The term 'Restricted Data' has the meaning given that term in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014).

(4) SPECIAL ACCESS PROGRAM.-The term `special access program' has the meaning given that term in section 4.1 of Executive Order No. 12958 (60 Fed. Reg. 19825).

(b) PROHIBITION.-After January 1, 2008, the head of a Federal agency may not grant or renew a security clearance for a covered person who is an unlawful user of a controlled substance or an addict (as defined in section 102(1) of the Controlled Substances Act (21 U.S.C. 802)).

(c) DISQUALIFICATION.-

(1) IN GENERAL.-After January 1, 2008, absent an express written waiver granted in accordance with paragraph (2), the head of a Federal agency may not grant or renew a security clearance described in paragraph (3) for a covered person who-

(A) has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding 1 year, and was incarcerated as a result of that sentence for not less than 1 year;

(B) has been discharged or dismissed from the Armed Forces under dishonorable conditions; or

(C) is mentally incompetent, as determined by an adjudicating authority, based on an evaluation by a duly qualified mental health professional employed

by, or acceptable to and approved by, the United States Government and in accordance with the adjudicative guidelines required by subsection (d).

(2) WAIVER AUTHORITY.-In a meritorious case, an exception to the disqualification in this subsection may be authorized if there are mitigating factors. Any such waiver may be authorized only in accordance with-

(A) standards and procedures prescribed by, or under the authority of, an Executive order or other guidance issued by the President; or

(B) the adjudicative guidelines required by subsection (d).

(3) COVERED SECURITY CLEARANCES.-This subsection applies to security clearances that provide for access to-

(A) special access programs;

(B) Restricted Data; or

(C) any other information commonly referred to as "sensitive compartmented information".

~~(4) ANNUAL REPORT.-~~

~~(A) REQUIREMENT FOR REPORT.-Not later than February 1 of each year, the head of a Federal agency shall submit a report to the appropriate committees of Congress if such agency employs or employed a person for whom a waiver was granted in accordance with paragraph (2) during the preceding year. Such annual report shall not reveal the identity of such person, but shall include for each waiver issued the disqualifying factor under paragraph (1) and the reasons for the waiver of the disqualifying factor.~~

~~(B) DEFINITIONS. In this paragraph:~~

~~(i) APPROPRIATE COMMITTEES OF CONGRESS.-The term `appropriate committees of Congress' means, with respect to a report submitted under subparagraph (A) by the head of a Federal agency-~~

~~(I) the congressional defense committees;~~

~~(II) the congressional intelligence committees; Page 174~~

~~(III) the Committee on Homeland Security and Governmental Affairs of the Senate;~~

~~(IV) the Committee on Oversight and Government Reform of the House of Representatives; and~~

~~(V) each Committee of the Senate or the House of Representatives with oversight authority over such Federal agency.~~

~~(ii) CONGRESSIONAL DEFENSE COMMITTEES.-The term `congressional defense committees' has the meaning given that term in section 101(a)(16) of title 10, United States Code.~~

~~(iii) CONGRESSIONAL INTELLIGENCE COMMITTEES.-The term `congressional intelligence committees' has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).~~

(d) ADJUDICATIVE GUIDELINES.-***

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UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT

SEC. 105A. [42 U.S.C. 1973ff-4a] REPORTING REQUIREMENTS.

(a) ***

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(b) ~~ANNUAL~~ BIENNIAL REPORT ON EFFECTIVENESS OF ACTIVITIES AND UTILIZATION OF CERTAIN PROCEDURES.—Not later than ~~March 31 of each year~~ September 30 of each odd-numbered year, the Presidential designee shall transmit to the President and to the relevant committees of Congress a report containing the following information with respect to the Federal election held during the preceding calendar year:

(1) An assessment of the effectiveness of activities carried out under section 103B, including the activities and actions of the Federal Voting Assistance Program of the Department of Defense, a separate assessment of voter registration and participation by absent uniformed services voters, a separate assessment of voter registration and participation by overseas voters who are not members of the uniformed services, and a description of the cooperation between States and the Federal Government in carrying out such section.

(2) A description of the utilization of voter registration assistance under 1566a of title 10, United States Code, which shall include the following:

(A) A description of the specific programs implemented by each military department of the Armed Forces pursuant to such section.

(B) The number of absent uniformed services voters who utilized voter registration assistance provided under such section.

(3) ~~In the case of a report submitted under this subsection in the year following a year in which a regularly scheduled general election for Federal office is held, a~~ A description of the utilization of the procedures for the collection and delivery of marked absentee ballots established pursuant to section 103A, which shall include the number of marked absentee ballots collected and delivered under such procedures and the number of such ballots which were not delivered by the time of the closing of the polls on the date of the election (and the reasons such ballots were not so delivered).

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DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2002
(Division A of Public Law 107-117)

SEC. 8159. [10 U.S.C. 2401a note] MULTI-YEAR AIRCRAFT LEASE PILOT PROGRAM. (a) The Secretary of the Air Force may, from funds provided in this Act or any future appropriations Act, establish and make payments on a multi-year pilot program for leasing general purpose Boeing 767 aircraft and Boeing 737 aircraft in commercial configuration.

(b) Sections 2401 and 2401a of title 10, United States Code, shall not apply to any aircraft lease authorized by this section.

(c) Under the aircraft lease Pilot Program authorized by this section:

(1) The Secretary may include terms and conditions in lease agreements that are customary in aircraft leases by a non-Government lessor to a non-Government lessee, but only those that are not inconsistent with any of the terms and conditions mandated herein. Notwithstanding the provisions of Section 3324 of Title 31, United States Code, payment for the acquisition of leasehold interests under this section may be made for each annual term up to one year in advance.

(2) The term of any individual lease agreement into which the Secretary enters under this section shall not exceed 10 years, inclusive of any options to renew or extend the initial lease term.

(3) The Secretary may provide for special payments in a lessor if the Secretary terminates or cancels the lease prior to the expiration of its term. Such special payments shall not exceed an amount equal to the value of 1 year's lease payment under the lease.

(4) Subchapter IV of chapter 15 of title 31, United States Code shall apply to the lease transactions under this section, except that the limitation in section 1553(b)(2) shall not apply.

(5) The Secretary shall lease aircraft under terms and conditions consistent with this section and consistent with the criteria for an operating lease as defined in OMB Circular A-11, as in effect at the time of the lease.

(6) Lease arrangements authorized by this section may not commence until:

(A) The Secretary submits a report to the congressional defense committees outlining the plans for implementing the Pilot Program. The report shall describe the terms and conditions of proposed contracts and describe the expected savings, if any, comparing total costs, including operation, support, acquisition, and financing, of the lease, including modification, with the outright purchase of the aircraft as modified.

(B) A period of not less than 30 calendar days has elapsed after submitting the report.

~~(7) Not later than 1 year after the date on which the first aircraft is delivered under this Pilot Program, and yearly thereafter on the anniversary of the first delivery, the Secretary shall submit a report to the congressional defense committees describing the status of the Pilot Program. The Report will be based on at least 6 months of experience in operating the Pilot Program.~~

(8) The Air Force shall accept delivery of the aircraft in a general purpose configuration.

(9) At the conclusion of the lease term, each aircraft obtained under that lease may be returned to the contractor in the same configuration in which the aircraft was delivered.

(10) The present value of the total payments over the duration of each lease entered into under this authority shall not exceed 90 percent of the fair market value of the aircraft obtained under that lease.

(d) No lease entered into under this authority shall provide for—

(1) the modification of the general purpose aircraft from the commercial configuration, unless and until separate authority for such conversion is enacted and only to the extent budget authority is provided in advance in appropriations Acts for that purpose; or

(2) the purchase of the aircraft by, or the transfer of ownership to, the Air Force.

(e) The authority granted to the Secretary of the Air Force by this section is separate from and in addition to, and shall not be construed to impair or otherwise affect, the authority of the Secretary to procure transportation or enter into leases under a provision of law other than this section.

(f) The authority provided under this section may be used to lease not more than a total of 100 Boeing 767 aircraft and 4 Boeing 737 aircraft for the purposes specified herein.

(g) Notwithstanding any other provision of law, any payments required for a lease entered into under this Section, or any payments made pursuant to subsection (c)(3) above, may be made from appropriations available for operation and maintenance or for lease or procurement of aircraft at the time that the lease takes effect; appropriations available for operation and maintenance or for lease or procurement of aircraft at the time that the payment is due; or funds appropriated for those payments.

Section 1034 would authorize the Secretary of Defense to sell the Mt. Soledad Veterans Memorial in San Diego, California, on the condition that it continue to be maintained as a veterans memorial.

Subsection (a) authorizes the Secretary to sell or exchange the memorial to an eligible entity.

Subsection (b) provides that the price received need not be equal to the fair market value of the memorial. It also imposes certain conditions: (1) that the recipient take the memorial "as is" and agree to indemnify the United States for the period of Federal ownership; (2) that the memorial be maintained as a veterans memorial in perpetuity; and (3) that if the memorial is ever put to another use, the United States has the right, at its election, to take back the memorial. Subsection (b) also provides that the Secretary may engage in a land exchange, as an alternative means of disposal. Such an exchange is conditioned on (1) the land received being of at least

equal value, (2) the land be adjacent to other Federal land, and (3) the Federal agency holding the adjacent land agreeing to take the proffered land.

Subsection (c) provides that any funds received will be used first to off-set the cost of the conveyance and then to pay back the cost of the original Federal acquisition.

Subsection (d) provides for land surveys.

Subsection (e) provides for additional terms and conditions as the Secretary determines necessary.

Subsection (f) excludes the conveyance from the National Historic Preservation Act and from prior legislation dealing with Mt. Soledad.

Subsection (g) provides definitions of "eligible entity", the memorial, and "veterans memorial".

The Mt. Soledad Veterans Memorial has been the subject of continuing litigation since the early 1990s because of the presence of a large Latin cross at its center. The memorial was originally owned by the City of San Diego but was acquired by the United States in a legislative taking, Public Law 109–272, in 2006. The litigation, which continues to this day, involves issues relating to the separation of church and state. The Congress assigned administrative jurisdiction over the memorial to the Department of Defense but provided that management would be by the Mt. Soledad Memorial Association. The Department of Defense does not normally maintain veterans memorials, particularly when not located on a military installation. Experience has shown that there is no reason for this memorial to be owned by the United States so long as it continues to be operated as a veterans memorial. The Navy, which was assigned jurisdiction by the Secretary of Defense, does not currently operate the memorial; it relies upon the Mt. Soledad Memorial Association to perform that function. The structures and fixtures on the memorial have been placed there by private entities. The only significant involvement of government has been ownership of the underlying land.

This proposal will allow the Department of Defense to end its already tenuous involvement with the memorial without changing the nature of the memorial as a veterans memorial. It will avoid potential Federal liability should an accident resulting in personal injury occur on the memorial. It will allow a fully interested private party to operate this veterans memorial in a manner best suited to achieve its goals. Provided only that the memorial be operated as a war memorial and maintained as such, there would be no requirement that the new owner preserve any of the existing tablets, statuary, or other fixtures on the site.

If no appropriate and eligible entity makes an acceptable offer, the Department of Defense will continue to operate the memorial as it currently does.

Budget Implications: The Navy currently has no management costs for Mt. Soledad. The memorial is managed by the Mt. Soledad Memorial Association using its own funding sources. Any receipts from a sale would go first to pay the administrative costs of the sale and then to reimburse the original purchase price. Since the original purchase was for an unencumbered property while this sale would be of a highly restricted property, the sale price would be only a small fraction of the original price. Consequently the Navy cannot profit from this sale. In fact, the Navy will essentially break even.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
USN	0	0	0	0	0	n/a	n/a	n/a	n/a
Total	0	0	0	0	0	n/a	n/a	n/a	n/a

Changes to Existing Law: Section 1034 is a new provision of law.

TITLE XI—CIVILIAN PERSONNEL MATTERS

Section 1101 would amend section 1587(b) of title 10, United States Code, to include "threaten to take" – referencing subsection (b). This would bring whistleblower protections for non-appropriated fund instrumentality (NAFI) employees more in line with the protections afforded to members of the Armed Forces under section 1034 of title 10 (Protected communications; prohibition of retaliatory personnel actions). It also brings section 1587 into closer conformance with the Inspector General Act of 1978, as amended.

Section 1034 of title 10 prohibits taking or threatening to take an unfavorable personnel action or withholding or threatening to withhold a favorable personnel action as a reprisal against a member of the Armed Forces for making a protected communication. It further states that such threats are considered to be prohibited personnel actions. The Inspector General Act of 1978, as amended, prohibits any employee who has authority to take, direct others to take, recommend or approve any personnel action to take or threaten to take any action against any employee for making a complaint or disclosing information to an Inspector General.

Amending section 1587 of title 10 to include threats to take or withhold personnel actions as personnel actions would align the protections for NAFI employees with those of members of the Armed Forces and Department of Defense (DoD) civilian employees. All of these categories of individuals warrant comparable protection as all are in positions to report wrongdoing affecting DoD expenditures and the integrity of DoD programs and operations.

Budget Implications: There would be no direct budget implications of the proposal. However, because the number of allegations subject to investigation would increase, DoD Office of Inspector General would have to devote additional resources to investigate threat allegations from NAFI employees.

Changes to Existing Law: Section 1101 would make the following changes to section 1587 of Title 10, U.S.C.

§ 1587. Employees of nonappropriated fund instrumentalities: reprisals

(a) In this section:

(1) * * *

* * * * *

(b) Any civilian employee or member of the armed forces who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take, threaten to take, or fail to take a personnel action with respect to any nonappropriated fund instrumentality employee (or any applicant for a position as such an employee) as a reprisal for—

(1) a disclosure of information by such an employee or applicant which the employee or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if such disclosure is not specifically prohibited by law and if the information is not specifically required by or pursuant to executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(2) a disclosure by such an employee or applicant to any civilian employee or member of the armed forces designated by law or by the Secretary of Defense to receive disclosures described in clause (1), of information which the employee or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) * * *

Section 1102 would extend from the end of Fiscal Year 2014 to the end of Fiscal Year 2018 the authority of the Secretary of Defense and the Secretaries of the military departments to allow Department of Defense activities and installations to minimize the negative impact of downsizing by encouraging employees to volunteer for Reduction-in-Force (RIF) separation in place of employees who are scheduled to be involuntarily separated by RIF procedures. The authority allows employees who are willing to leave the Federal Service, but whose retention

standing prevents separation, to be voluntarily separated by RIF, which includes becoming eligible for entitlements such as severance pay or continued health benefits coverage. If, at any point in the RIF process, it is determined that the voluntary separation would not result in saving a RIF-affected employee, the voluntary separation authority is not used. The authority is an essential part of the transition toolkit to assist installations by offsetting the hardships experienced by employees who would otherwise be involuntarily separated.

Changes to Existing Law: Section 1102 would make the following change to section 3502(f)(5) of title 5, United States Code.

5 USC § 3502

§ 3502. Order of Retention

(a) * * *

* * * * *

(f)(1) The Secretary of Defense or the Secretary of a military department may—

(A) separate from service any employee who volunteers to be separated under this subparagraph even though the employee is not otherwise subject to separation due to a reduction in force; and

(B) for each employee voluntarily separated under subparagraph (A), retain an employee in a similar position who would otherwise be separated due to a reduction in force.

(2) The separation of an employee under paragraph (1)(A) shall be treated as an involuntary separation due to a reduction in force.

(3) An employee with critical knowledge and skills (as defined by the Secretary concerned) may not participate in a voluntary separation under paragraph (1)(A) if the Secretary concerned determines that such participation would impair the performance of the mission of the Department of Defense or the military department concerned.

(4) The regulations prescribed under this section shall incorporate the authority provided in this subsection.

(5) No authority under paragraph (1) may be exercised after September 30, ~~2014~~ 2018.

Section 1103 would amend section 1595 of title 10, United States Code, to provide Title 10 hiring authority for civilians as professors, instructors, and lecturers at two Department of Defense (DoD) educational institutions: the Defense Institute of Security Assistance Management (DISAM) and the Joint Special Operations University (JSOU). In so doing, the proposal would allow those institutions to operate under the same authority used by other educational institutions under the administrative control of the Secretary of Defense. Title 10 hiring authority would provide the flexibility to hire select talent that is not always readily accessible via the traditional Title 5 hiring process and would insure that faculty at those institutions remains relevant in their area of expertise by enabling the hiring of faculty with

timely expertise in an expeditious manner and, if necessary, the replacement of faculty who do not maintain currency in their realm of expertise.

DISAM is a DoD school established to train and educate United States Government and foreign personnel in conducting security assistance and security cooperation programs. DISAM is organized under the Defense Security Cooperation Agency (DSCA). The authority that would be provided under this proposal would ensure that DISAM can continue to manage its civilian faculty as excepted from General Schedule provisions as is fitting for an academic institution, allowing it to continue hiring the most qualified faculty in the area of foreign security assistance and international engagements and allowing DISAM to manage the faculty in the most effective fashion.

The Joint Special Operations University (JSOU) is a joint academic institution that serves as the education center of the United States Special Operations Command (USSOCOM). It is an institution of higher learning, providing targeted operational and strategic level education to Special Operations Forces (SOF) and SOF enablers. JSOU supports both U.S. and International SOF, works with the formal DoD Professional Military Education (PME) system to develop SOF curriculum, conducts war college level classes and authentically represents SOF in numerous end-of-course "Capstone" wargames. In addition, JSOU conducts a formally recognized Senior Noncommissioned Officer (NCO) Academy on par with military service programs and is the only joint NCO academy within DoD. JSOU engages in routine interaction with all DoD Regional Centers to support global partner engagement, and adds a variety of SOF related subject matter expertise to their curricula. JSOU was founded to meet joint special operations educational requirements that have not been fulfilled within the formal DoD PME system or in USSOCOM's component schools.

In order to meet its future education needs, JSOU requires the same flexibility as the traditional PME institutions have to hire faculty with expertise in selected disciplines not normally found within the SOF/military community. The key to ensuring JSOU's academic success is relevancy to all current pillars of national security strategy with a strong focus on the future global environment. Such faculty members must have the requisite specialized education and academic experience equivalent to our national civilian colleges and universities. Due to its structure, the traditional civil service system does not normally provide JSOU the best qualified instructor candidate. Title 10 authority to hire and appropriately compensate the best qualified faculty will ensure SOF personnel are the most highly educated and effective warrior diplomats that DoD has to offer in support of our Nation's defense priorities. JSOU with the assistance of USSOCOM will formalize this program, vetting faculty and maintaining their credentials and security clearances in order to leverage this valuable resource. This will increase JSOU's capacity to fulfill the Commander, USSOCOM' vision of SOF being the most educated force.

Budget Implications: None. This proposal changes the employment and compensation authorities for DISAM and JSOU, but does not increase the resource requirements for either institution.

Changes to Existing Law: Section 1103 would make the following change to section 1595 of title 10, United States Code:

§ 1595. Civilian faculty members at certain Department of Defense schools: employment and compensation

(a) AUTHORITY OF SECRETARY.—The Secretary of Defense may employ as many civilians as professors, instructors, and lecturers at the institutions specified in subsection (c) as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

(c) COVERED INSTITUTIONS.—This section applies with respect to the following institutions of the Department of Defense:

(1) The National Defense University.
(2) The Foreign Language Center of the Defense Language Institute.
(3) The English Language Center of the Defense Language Institute.
(4) The Western Hemisphere Institute for Security Cooperation.
(5) The Defense Institute for Security Assistance Management.
(6) The Joint Special Operations University.

(d) APPLICATION TO FACULTY MEMBERS AT NDU.—In the case of the National Defense University, this section applies with respect to persons selected by the Secretary for employment as professors, instructors, and lecturers at the National Defense University after February 27, 1990.

Section 1104 would extend the authority for the Secretary of Defense or the Secretary of a military department to allow eligible Department of Defense (DoD) employees scheduled to be involuntarily separated from Federal service to request a lump sum severance payment in lieu of biweekly payments. This option allows the employee additional financial flexibility in preparing for their separation from Federal service. If the employee does request and receive approval for the lump sum severance payment, they are then obligated, if reemployed by the Federal government or the District of Columbia during the severance pay time period, to return to the Department of Defense the part of the lump sum severance payment that would not have been paid if the employee had been receiving biweekly payments. This authority was first provided to Department of Defense in section 1035 of the National Defense Authorization Act for Fiscal Year (FY) 1996 (Public Law 104-106).

Budget Implications: There is no additional cost or budget impact because of the way severance pay is disbursed and reimbursement is required. Severance pay is calculated using years of creditable civilian service, basic pay (which may include premium pay and night shift differential); and age. The maximum severance pay entitlement over an employee's lifetime is limited to the amount that would provide 52 weeks of pay. Any severance pay received due to prior separations is deducted from the lifetime entitlement. DoD employees have the option to receive severance pay in a lump sum or in bi-weekly payments. If an employee chooses the lump sum option, they must upon reemployment repay it on a pro-rated basis so that the severance pay entitlement received is the same as if they received it under the bi-weekly payment option.

Changes to Existing Law: Section 1104 would make the following change to section 5595(i)(4) of title 5, United States Code.

TITLE 5, UNITED STATES CODE

§ 5595. Severance pay

(a) ***

****

(i)(1) In the case of an employee of the Department of Defense who is entitled to severance pay under this section, the Secretary of Defense or the Secretary of the military department concerned may, upon application by the employee, pay the total amount of the severance pay to the employee in one lump sum.

(2)(A) If an employee paid severance pay in a lump sum under this subsection is reemployed by the Government of the United States or the government of the District of Columbia at such time that, had the employee been paid severance pay in regular pay periods under subsection (b), the payments of such pay would have been discontinued under subsection (d) upon such reemployment, the employee shall repay to the Department of Defense (for the military department that formerly employed the employee, if applicable) an amount equal to the amount of severance pay to which the employee was entitled under this section that would not have been paid to the employee under subsection (d) by reason of such reemployment.

(B) The period of service represented by an amount of severance pay repaid by an employee under subparagraph (A) shall be considered service for which severance pay has not been received by the employee under this section.

(C) Amounts repaid to an agency under this paragraph shall be credited to the appropriation available for the pay of employees of the agency for the fiscal year in which received. Amounts so credited shall be merged with, and shall be available for the same purposes and the same period as, the other funds in that appropriation.

(3) If an employee fails to repay to an agency an amount required to be repaid under paragraph (2)(A), that amount is recoverable from the employee as a debt due the United States.

(4) This subsection applies with respect to severance pay payable under this section for separations taking effect on or after February 10, 1996, and before ~~October 1, 2014~~October 1, 2018.

(j) ***

Section 1105 would modify section 2105 of title 5, United States Code, to strike references to the Army and Air Force Motion Picture Service and Navy Ships Stores Ashore, substituting the Navy Ships Stores Program to provide a more accurate and current definition of NAF employees.

The origins of the Army and Air Force Motion Picture Service (AAFMPS) began with the establishment of the Army Motion Picture Service in 1920. Special services, such as the AAFMPS, were in full operation during World War II and the Korean and Vietnam conflicts to support military morale, welfare, and recreation. Today, AAFMPS as an organizational entity no longer exists, and its residual functions are accomplished through the motion picture and theater operations of the Army and Air Force Exchange Service. Also, the Navy Ship's Stores Ashore is now referred to as the Navy Ships Stores Program, according to the Navy Exchange Service Command (NEXCOM) Ships Stores Program.

Changes to Existing Law: Section 1105 would make the following change to Section 2105(c) of title 5, United States Code.

§ 2105. Employee

(a) For the purpose of this title, "employee", except as otherwise provided by this section or when specifically modified, means an officer and an individual who is—

(1) appointed in the civil service by one of the following acting in an official capacity—

(A) the President;

(B) a Member or Members of Congress, or the Congress;

(C) a member of a uniformed service;

(D) an individual who is an employee under this section;

(E) the head of a Government controlled corporation; or

(F) an adjutant general designated by the Secretary concerned under section 709 (c) of title 32;

(2) engaged in the performance of a Federal function under authority of law or an Executive act; and

(3) subject to the supervision of an individual named by paragraph (1) of this subsection while engaged in the performance of the duties of his position.

(b) An individual who is employed at the United States Naval Academy in the midshipmen's laundry, the midshipmen's tailor shop, the midshipmen's cobbler and barber

shops, and the midshipmen's store, except an individual employed by the Academy dairy (if any), and whose employment in such a position began before October 1, 1996, and has been uninterrupted in such a position since that date is deemed an employee.

(c) An employee paid from nonappropriated funds of the Army and Air Force Exchange Service, ~~Army and Air Force Motion Picture Service, Navy Ship's Stores Ashore~~ Navy Ships Stores Program, Navy exchanges, Marine Corps exchanges, Coast Guard exchanges, and other instrumentalities of the United States under the jurisdiction of the armed forces conducted for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the armed forces is deemed not an employee for the purpose of—

(1) laws administered by the Office of Personnel Management, except—

(A) section 7204;

(B) as otherwise specifically provided in this title;

(C) the Fair Labor Standards Act of 1938;

(D) for the purpose of entering into an interchange agreement to provide for the noncompetitive movement of employees between such instrumentalities and the competitive service; or

(E) subchapter V of chapter 63, which shall be applied so as to construe references to benefit programs to refer to applicable programs for employees paid from nonappropriated funds; or

(2) subchapter I of chapter 81, chapter 84 (except to the extent specifically provided therein), and section 7902 of this title.

This subsection does not affect the status of these nonappropriated fund activities as Federal instrumentalities.

(d) A Reserve of the armed forces who is not on active duty or who is on active duty for training is deemed not an employee or an individual holding an office of trust or profit or discharging an official function under or in connection with the United States because of his appointment, oath, or status, or any duties or functions performed or pay or allowances received in that capacity.

(e) Except as otherwise provided by law, an employee of the United States Postal Service or of the Postal Regulatory Commission is deemed not an employee for purposes of this title.

(f) For purposes of sections 1212, 1213, 1214, 1215, 1216, 1221, 1222, 2302, and 7701, employees appointed under chapter 73 or 74 of title 38 shall be employees.

TITLE XII—MATTERS RELATING TO FOREIGN NATIONS

Section 1201 would allow the Secretary of Defense to provide Weapons of Mass Destruction (WMD) incident response training and basic equipment to foreign military and civilian first responders at all levels of government who may or may not be part of a national

security force--this authority does not currently exist. The Secretary of Defense would exercise this authority and activities would be funded through the Defense Threat Reduction Agency (DTRA) using Defense-wide Operation and Maintenance (O&M) funds in targeted partner nations.

DTRA conducts the Department's Consequence Management Assistance Program (CMAP) in coordination with the supported strategic priorities of the Combatant Commanders. Section 1206 of the National Defense Authorization Act (NDAA) for Fiscal Year 2006, as amended, allows the Secretary of Defense, with the concurrence of the Secretary of State, to train and equip foreign military forces to conduct counterterrorist operations, or to participate in or support military and stability operations in which the United States Armed Forces are a participant. However, no specific authority exists to allow the use of Defense-wide O&M funds to train and provide basic response equipment to foreign military and civilian WMD incident first responders.

The 2002 National Strategy to Combat Weapons of Mass Destruction, December 2002, provides that "the United States must be prepared to respond to the use of WMD against our citizens, our military forces, and those of friends and allies. We will develop and maintain the capability to reduce to the extent possible the potentially horrific consequences of WMD attacks at home and abroad." Thus, the ability to conduct consequence management (CM) operations in response to WMD events, whether intentional or inadvertent, is a necessary component of the countering WMD mission.

Moreover, the 2006 National Military Strategy to Combat Weapons of Mass Destruction, which supports the National Strategy to Combat WMD, states: "[T]he Department [of Defense] has an important role to play in combating WMD, we must and will integrate DoD efforts with those of other elements of the U.S. Government, allies, and partners." Authorizing DoD to conduct military-to-civilian training will enhance the ability of U.S. forces to integrate effectively with foreign military and civilian first responders, enhance the WMD response capabilities of U.S. forces and foreign first responders, and ultimately enhance the security of U.S. forces and partner nations.

The President's strategic guidance (Sustaining U.S. Global Leadership: Priorities for 21st Century Defense) released in January 2012, emphasizes the importance of investing in the capability to respond to WMD use. Additionally, the President calls for "innovation" and "versatility" in implementing the strategic guidance.

Consistent with the President's intent, this proposal would allow the Department of Defense to train foreign country forces based on mission rather than organization. Partner nation first response forces are often organized differently from those in the United States; they may perform military functions and require military capabilities, but may or may not be a part of a military organization. The ability of the Department of Defense to provide training to foreign

military and civilian first responders is critical to achieving the President's strategic guidance with respect to WMD response.

Furthermore, the ability to provide low-cost, high-demand equipment to partner organizations is essential to realistic and effective training and integration. This equipment would provide an initial capability and would take the form of basic equipment or supplies. Such equipment would be made available for use by both the host nation and U.S. forces that may be called upon to support the host nation.

The activities conducted under this proposal would be developed in accordance with the policies established by the Under Secretary of Defense for Policy (USD(P)). Efforts would be planned and executed in close coordination and collaboration with U. S. Strategic Command (USSTRATCOM) and the Geographic Combatant Commands in whose areas activities would be executed.

This proposal has been coordinated with the Office of the Deputy Assistant Secretary of Defense for Countering Weapons of Mass Destruction, the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Department of State's Political-Military Bureau.

Budget Implications: Funding for these activities is included in the fiscal year (FY) 2014 budget request of the Defense Threat Reduction Agency (DTRA).

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
DTRA	2.73	3.37	3.89	3.92	3.91	Operation and Maintenance, Defense-wide	BA-04 Administrative and Service-wide Activities	0100	0302199BR -CS-CX

Changes to Existing Law: Section 1201 would not change the text of any existing statute.

Section 1202 would temporarily provide the Department of Defense (DoD) with an expanded authority to provide defense services in connection with transfers of excess defense articles (EDA) and foreign excess personal property (FEPP) to foreign countries. Additionally, this proposal would allow construction equipment to be provided as EDA to the Government of Afghanistan. This proposal builds on a request received from the Commander, United States Central Command (USCENTCOM), that the Secretary of Defense and Chairman of the Joint Chiefs of Staff support "changes to authorities currently written or new legislation to permit transfer of excess operational stocks to meet long-term security assistance objectives." In

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

This authority would provide DoD, with Department of State concurrence, the authority to provide defense services (including transportation) in connection with transfers of EDA and FEPP located in Afghanistan to foreign countries, assisting the Commander, USCENTCOM to meet long-term security cooperation objectives. DoD would only provide defense services for EDA and FEPP transfers where it makes financial sense to do so, rather than ship items to the United States.

The proposal would not increase the budget and would limit the aggregate value of defense services provided to $100 million per fiscal year. In summary the proposal would authorize the transfer of EDA that the military departments have determined is more economical to transfer rather than retrograde to the United States. The intent of this portion is to focus any defense services to countries that contributed to the Northern Distribution Network and facilitate the United States' continued retrograde of equipment from Afghanistan. Although section 516 of the Foreign Assistance Act of 1961 provides the U.S. Government the authority to transfer EDA, section 516 does not authorize DoD to expend any funds to facilitate the transfer of EDA and, in fact, contains specific prohibitions against DoD funds being used in connection with such transfers. This proposal would provide DoD the authority to provide transportation, maintenance services, etc. in connection with the transfer of EDA and FEPP.

Finally, this proposal would authorize construction equipment from the stocks of the Department of Defense located in Afghanistan as of the date of the enactment to be transferred to Afghanistan as EDA under section 516 of the Foreign Assistance Act of 1961. This authority would assist the Commander, USCENTCOM to meet long-term security cooperation objectives and ensure the seamless transfer of the country of Afghanistan back to the Government of the Islamic Republic of Afghanistan.

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

the full retrograde and reset cost to bring equipment back to the United States.

RESOURCE SAVINGS ($THOUSANDS)								
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Army	+0	+0	+0	+0	+0	O&M, Army-		
Navy	+0	+0	+0	+0	+0	O&M, Navy		
Marine Corps	+0	+0	+0	+0	+0	O&M, Marine Corps		
Coast Guard	+0	+0	+0	+0	+0	O&M, Coast Guard		
Air Force	+0	+0	+0	+0	+0	O&M, Air Force – 3400		
DOD	+0	+0	+0	+0	+0	O&M, Department of Defense-wide		
Total	+0	+0	+0	+0	+0			

NUMBER OF PERSONNEL AFFECTED							
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation To**	**Personnel Type (Officer, Enlisted, or Civilian)**
Army	0	0	0	0	0	N/A	N/A
Navy	0	0	0	0	0	N/A	N/A

Marine Corps	0	0	0	0	0	N/A	N/A
Air Force	0	0	0	0	0	N/A	N/A
Total	0	0	0	0	0		

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

Changes to Existing Law: Section 1202 will not change the text of existing law.

Section 1203 would authorize the Department of Defense (DoD) to continue to develop, manage, and execute a Non-Conventional Assisted Recovery (NAR) personnel recovery program for isolated DoD, U.S. Government, and other designated personnel supporting U.S. national interests globally. The initial authorization contained in section 943 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417) provided for funds for this program to be available through fiscal year (FY) 2011. This section was amended in Public Law 112-81, section 1205, that provided for funds for this program to be available through FY 2013. This legislative proposal would allow the Secretary of Defense to use funds for this program through FY 2018.

This personnel recovery program includes the use of irregular groups, or individuals, including indigenous personnel, tasked with the establishment of infrastructures and capabilities that would be used to facilitate the recovery of isolated personnel conducting activities globally in support of Combatant Commander operations. Support to surrogate forces includes, but is not limited to, the provision of equipment, supplies, services, training, transportation, payment, bonuses, third-party leasing of structures and services, documentation, minor construction, and other logistical funding. This proposal would reauthorize sufficient statutory authority to execute the NAR program.

Budget Implications: PDM III of December 2006 funded NAR from FY 08 to FY 13. This program is funded from Defense Wide Operation and Maintenance accounts through FY 2018.

	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
NCR	3.1	3.1	3.1	3.1	3.2	Operation and Maintenance, Defense Wide	01	1CCM	
Total	3.1	3.1	3.1	3.1	3.2				

Changes to Existing Law: Section 1203 would amend section 943 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417), as amended by section 1205 of Public Law 112-81, as follows:

SEC. 943. AUTHORIZATION OF NON-CONVENTIONAL ASSISTED RECOVERY CAPABILITIES.

(a) NON-CONVENTIONAL ASSISTED RECOVERY CAPABILITIES.—Upon a determination by a commander of a combatant command that an action is necessary in connection with a non-conventional assisted recovery effort, and with the concurrence of the relevant Chief of Mission or Chiefs of Mission, an amount not to exceed $20,000,000 of the funds appropriated pursuant to an authorization of appropriations or otherwise made available for ‘‘Operation and Maintenance, Defense wide’’ may be used to establish, develop, and maintain non-conventional assisted recovery capabilities.
(b) PROCEDURES.—The Secretary of Defense shall establish procedures for the exercise of the authority under subsection (a). The Secretary shall notify the congressional defense committees of those procedures before any exercise of that authority.
(c) AUTHORIZED ACTIVITIES.—Non-conventional assisted recovery capabilities authorized under subsection (a) may, in limited and special circumstances, include the provision of support to entities conducting activities relating to operational preparation of the environment, including foreign forces, irregular forces, groups, or individuals, in order to facilitate the recovery of Department of Defense or Coast Guard military or civilian personnel, or other individuals who, while conducting activities in support of United States military operations, become separated or isolated and cannot rejoin their units without the assistance authorized in subsection (a). Such support may include the provision of limited amounts of equipment, supplies, training, transportation, or other logistical support or funding.
(d) NOTICE TO CONGRESS ON USE OF AUTHORITY.— (1) NOTICE. - The Secretary of Defense shall notify the congressional defense committees not later than 30 days prior to using the authority in subsection (a) to make funds available for support of non-conventional assisted recovery activities. Any such notice shall be in writing.
(2) CONTENT. - Each notification required under paragraph (1) shall include the following information:

(A) The amount of funds made available for support of non-conventional assisted recovery activities.

(B) A description of the non-conventional assisted recovery activities.

(C) An identification of the type of recipients to receive support for non-conventional assisted recovery activities, including foreign forces, irregular forces, groups, or individuals, as appropriate.

(e) QUARTERLY REPORT.

(1) REPORT. - The Secretary of Defense shall submit to the relevant congressional committees a report on support for non-conventional assisted recovery activities under subsection (a) of this section. Such report shall be included as a part of the classified quarterly report on similar activities.

(2) CONTENTS. - The report shall, with respect to the covered period, include the following information:

(A) The amount of funds obligated for support of non-conventional assisted recovery activities

(B) A description of the non-conventional assisted recovery activities.

(C) An identification of the type of recipients to receive support for non-conventional assisted recovery activities, including foreign forces, irregular forces, groups, or individuals, as appropriate.

(D) The total amount of funds obligated for support of non-conventional assisted recovery activities, including budget details.

(E) The total amount of funds obligated for support of non-conventional assisted recovery activities in prior fiscal years.

(F) The intended duration of support for support of non-conventional assisted recovery activities.

(G) A description of support or training provided to the recipients of support

(H) A value assessment of the support provided.

(3) COVERED PERIOD. – In this subsection, the term “covered period” means the period with respect to which the classified quarterly report on similar activities applies

(f) LIMITATION ON INTELLIGENCE ACTIVITIES.—

This section does not constitute authority to conduct or support a covert action, as such term is defined in section 503(e) of the National Security Act of 1947 (50 U.S.C. 413b(e)).

(g) LIMITATION ON FOREIGN ASSISTANCE ACTIVITIES.—This section does not constitute authority—

(1) to build the capacity of foreign military forces or provide security and stabilization assistance, as described in sections 1206 and 1207 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3456 and 3458), respectively; and

(2) to provide assistance that is otherwise prohibited by any other provision in law, including any provision of law relating to the control of exports of defense articles, defense services, or defense technologies.

(h) PERIOD OF AUTHORITY.—The authority under this section is in effect during each of the fiscal years 2009 through ~~2013~~ 2018.

Section 1204 would amend section 516(g)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j(g)(1)) by increasing the dollar value of excess defense articles that may be transferred in a fiscal year from $425,000,000 to $500,000,000.

Current law limits the dollar value of excess defense articles (EDA) transferred pursuant to the authority of section 516 of the Foreign Assistance Act (FAA) to $425,000,000 per fiscal year. This limitation was last revised in 1999, when it was increased from $350,000,000 to the current $425,000,000 (section 1213 of the Security Assistance Act of 1999, P.L.-106-113). EDA transfer authorizations have steadily increased in recent years. EDA authorized for transfer rose from $201,000,000 in fiscal year 2010 to $408,000,000 in fiscal year 2011. During the first three quarters of fiscal year 2012, EDA authorized for transfer (or in the process of being authorized) totaled $327,000,000. The aforementioned authorization values do not include EDA transferred to Iraq and Afghanistan in 2010 because those transfers were exempted from counting against the $425,000,000 limitation pursuant to a separate temporary authority (section 1234 of P.L. 111-84).

Over recent years the aggregate value of EDA authorized for transfer has increased due to such factors as inflation, an increased interest by countries in obtaining excess defense articles, and the United States interest in building partnership capacities in less developed countries. The current United States interest in building partnership capacity in Africa, for instance, has resulted in EDA transfers being authorized for new customer countries such as Burundi, Cameroon, he Central African Republic, and Sierra Leone in fiscal year 2011, and Libya and Niger in fiscal year 2012. The United States Africa Command is extremely interested in adding additional countries to the grant eligibility list for fiscal year 2013 to further assist in building partnership capacity with additional countries in Africa.

Budget Implications: The proposed revision of section 516(g)(1) of the FAA to increase the amount of EDA that may be transferred in a fiscal year from $425,000,000 to $500,000,000 would not have any budgetary impact on the Department of Defense (DoD). EDA consists of items no longer needed by any of the Military Departments. EDA is screened through the normal excess property disposition processes and other U.S. Government agencies and, where applicable, state and local agencies have the opportunity to obtain EDA before it is offered to foreign countries. EDA transferred under section 516 of the FAA is provided to the recipient country at no cost in an as-is, where-is condition. By statute (section 516(e)(1) of the FAA), funds available to DoD may not be expended for the follow-on costs of packing, crating, handling and transportation (although space available transportation for certain developing countries is allowed in limited circumstances). The recipient country is responsible for those costs.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY	**FY**	**FY**	**FY**	**FY**	**Appropriation**	**Budget**	**Dash-1**	**Program**

	2014	2015	2016	2017	2018	To	Activity	Line Item	Element
FMS	0.0	0.0	0.0	0.0	0.0	N/A	N/A	N/A	N/A

Changes to Existing Law: Section 1204 would amend section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j) as follows:

SEC. 516. AUTHORITY TO TRANSFER EXCESS DEFENSE ARTICLES.

(a) ***

* * * * * * *

(g) AGGREGATE ANNUAL LIMITATION.—

(1) IN GENERAL.—The aggregate value of excess defense articles transferred to countries under this section in any fiscal year may not exceed ~~$425,000,000~~ $500,000,000.

(2)***

Section 1205: Effective July 1, 2012, the North Atlantic Treaty Organization (NATO) Management and Supply Organization (NAMSO) and its executive agency, the NATO Management and Supply Agency (NAMSA), were merged with the NATO Airlift Management Organization (NAMO) and its executive agency, the NATO Airlift Management Agency (NAMA), and the Central Europe Pipeline Management Organization (CEPMO) and its executive agency, the Central Europe Pipeline Management Agency (CEPMA), to form the NATO Support Organization (NSPO) and its executive agency, the NATO Support Agency (NSPA). The position of the United States, and accepted by NATO, however, was that the charters of the NAMSO, NAMO, and CEPMO would not be revoked until the dates "on which those NATO member nations inform the [North Atlantic] Council that the internal measures necessary to ensure programmatic and operational support continuity have been taken." Council Decision on the Establishment of the NATO Support Organisation (NSPO), AC/281-N(2012)0081-REV5 R, Annex 1 (June 8, 2012).

The United States identified two statutes where NATO entities affected by the merger were mentioned by name. Those statutes confer certain authorities when dealing with those entities that are not necessarily extended to successor entities. 10 U.S.C. § 2350d provides authority for the Secretary of Defense to enter into Weapons System Partnership Agreements (WSPs) with one or more governments or other member countries participating in NAMSO and pursuant to NAMSO's charter. With the dissolution of NAMSO's charter, the United States would not have authority to participate in those WSPs. Section 21 of the Arms Export Control Act, codified at 22 U.S.C. §2761, is a basic authority to sell U.S. defense articles from stock to eligible foreign governments and international organizations. The section also requires collection of costs to cover the management of the foreign military sales program and permits the

waiver of such costs in any sale to NAMSA in support of a WSP. Section 21(e)(3) allows those administrative costs to be waived for NAMSA Letters of Offer and Acceptance in support of a WSP (or NATO SHAPE projects). The United States is allowed to subsidize that surcharge, and in fact the U.S. Army pays more than $1 million annually that NAMSA would otherwise have to pay. The authority to waive the foreign military sales (FMS) administrative surcharge for NAMSA is based on statutory authority that is specific to NAMSA. A merger in which NAMSA no longer exists would result in an FMS administrative surcharge being assessed to the new organization, at least until new legislation is enacted to make that waiver authority applicable to a different organization.

This legislative proposal would revise the two operative statutes to reflect the new NATO organizational structure and would permit completion of the NATO agency reform process by applying U.S. Statutory provisions to the new organization. A search of the United States Code did not show that any of the other NATO organizations affected by the merger were named specifically. The legislative proposal substitutes a reference to NSPO and its executive agencies for the former references to NAMSO and NAMSA. Inclusion of "executive agencies" allows sales under section 21 to continue to the new agency, NSPA, or other agencies that may be organized under the new organization, NSPO.

The rationale for the proposed change to 10 U.S.C. 2350d(a)(1)(B) and 22 U.S.C. 2761(e)(3)(C)(ii) is to conform these provisions to the new NATO Support Organization Charter language, which is broader and uses "activities" rather than "a specific weapon system" throughout.

This legislative proposal also updates the statute to use the term "Support Partnership Agreement" instead of "Weapon Systems Partnership."

Budget Implications: This proposal would have no effect on the Department of Defense budget. Amending current law to conform statutory references to the revised names of certain NATO entities does not have any budget effect. The United States agreed at the Secretary of Defense-level to the Agency Reform. This change occurred July 01, 2012. There was no need to request additional funding from the new Agency to the Nations to execute this change. The marginal administrative costs of the change were met through reallocation of current year administrative funding allotted to the previous Agencies. The statutory language proposes necessary changes to U.S. Code to recognize the changes that have already taken place at NATO in support of ongoing initiatives. The cost of these initiatives is independent of the name change.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
State	0.0	0.0	0.0	0.0	0.0				

DOD	0.0	0.0	0.0	0.0	0.0				

Changes to Existing Law: Section 1205 would make the following changes to existing law:

TITLE 10, UNITED STATES CODE

§2350d. Cooperative logistic support agreements: NATO countries

(a) GENERAL AUTHORITY.—(1) The Secretary of Defense may enter into bilateral or multilateral agreements known as ~~Weapon System~~ Support Partnership Agreements with one or more governments of other member countries of the North Atlantic Treaty Organization (NATO) participating in the operation of the ~~NATO Maintenance and Supply Organization~~ NATO Support Organization and its executive agencies. Any such agreement shall be for the purpose of providing cooperative logistics support for the armed forces of the countries which are parties to the agreement. Any such agreement—

(A) shall be entered into pursuant to the terms of the charter of the ~~NATO Maintenance and Supply Organization~~ NATO Support Organization and its executive agencies; and

(B) shall provide for the common logistic support of ~~a specific weapon system~~ activities common to the participating countries.

(2) Such an agreement may provide for—

(A) the transfer of logistics support, supplies, and services by the United States to the ~~NATO Maintenance and Supply Organization~~ NATO Support Organization and its executive agencies; and

(B) the acquisition of logistics support, supplies, and services by the United States from that Organization.

(b) AUTHORITY OF SECRETARY.— Under the terms of a ~~Weapon System~~ Support Partnership Agreement, the Secretary of Defense—

(1) may agree that the ~~NATO Maintenance and Supply Organization~~ NATO Support Organization and its executive agencies may enter into contracts for supply and acquisition of logistics support in Europe for requirements of the United States, to the extent the Secretary determines that the procedures of such Organization governing such supply and acquisition are appropriate; and

(2) may share the costs of set-up charges of facilities for use by the ~~NATO Maintenance and Supply Organization~~ NATO Support Organization and its executive agencies to provide cooperative logistics support and in the costs of establishing a revolving fund for initial acquisition and replenishment of supply stocks to be used by the ~~NATO Maintenance and Supply Organization~~ NATO Support Organization and its executive agencies to provide cooperative logistics support.

(c) SHARING OF ADMINISTRATIVE EXPENSES.—Each ~~Weapon System~~ Support Partnership Agreement shall provide for joint management by the participating countries and for the equitable sharing of the administrative costs and costs of claims incident to the agreement.

(d) APPLICATION OF CHAPTER 137.—Except as otherwise provided in this section, the provisions of chapter 137 of this title apply to a contract entered into by the Secretary of Defense for the acquisition of logistics support under a ~~Weapon System~~ Support Partnership Agreement.

(e) APPLICATION OF ARMS EXPORT CONTROL ACT.—Any transfer of defense articles or defense services to a member country of the North Atlantic Treaty Organization or to the ~~NATO Maintenance and Supply Organization~~ NATO Support Organization and its executive agencies for the purposes of a ~~Weapon System~~ Support Partnership Agreement shall be carried out in accordance with this chapter and the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(f) SUPPLEMENTAL AUTHORITY.—The authority of the Secretary of Defense under this section is in addition to the authority of the Secretary under subchapter I and any other provision of law.

ARMS EXPORT CONTROL ACT

Sec. 21. [22 U.S.C. 2761] Sales From Stocks.—(a)(1) ***

****

(e)(1) After September 30, 1976, letters of offer for the sale of defense articles or for the sale of defense services that are issued pursuant to this section or pursuant to section 22 of this Act shall include appropriate charges for—

(A) administrative services, calculated on an average percentage basis to recover the full estimated costs (excluding a pro rata share of fixed base operation costs) of administration of sales made under this chapter to all purchasers of such articles and services as specified in section 43(b) and section 43(c) of this Act;

(B) ***

******

(2) ***

(3)(A) The President may waive the charges for administrative services that would otherwise be required by paragraph (1)(A) in connection with any sale to the ~~Maintenance and~~

~~Supply Agency of the~~ North Atlantic Treaty Organization (NATO) Support Organization and its executive agencies in support of—

(i) a ~~weapon system~~ support partnership agreement; or

(ii) a NATO/SHAPE project.

(B) The Secretary of Defense may reimburse the fund established to carry out section 43(b) of this Act in the amount of the charges waived under subparagraph (A) of this paragraph. Any such reimbursement may be made from any funds available to the Department of Defense.

*** *** ***

(C) As used in this paragraph—

(i) the term "~~weapon system~~ support partnership agreement" means an agreement between two or more member countries of the ~~Maintenance and Supply Agency of the~~ North Atlantic Treaty Organization (NATO) Support Organization and its executive agencies that—

(I) is entered into pursuant to the terms of the charter of that organization; and

(II) is for the common logistic support of ~~a specific weapon system~~ activities common to the participating countries; and

(ii) the term "NATO/SHAPE project" means a common-funded project supported by allocated credits from North Atlantic Treaty Organization bodies or by host nations with NATO Infrastructure funds.

Section 1206 would extend for five years the Special Immigrant Visa (SIV) program for Iraqis, created by section 1244 of the Refugee Crisis in Iraq Act of 2007 as contained in Public Law 110-181, the National Defense Authorization Act for Fiscal Year 2008. As originally authorized, section 1244 would authorize issuance of special immigrant visas for Iraqis employed by or on behalf of the United States in Iraq for not less than one year during the period of March 20, 2003 – September 30, 2013. Since the full number of SIVs authorized to be issued were not exhausted when the five-year authority lapsed on September 30, 2012, it is imperative that the authority be extended for five additional years to allow the initially authorized number of visas to be processed and issued in that additional time.

Changes to Existing Law: Section 1206 would amend section 1244 of the Refugee Crisis in Iraq Act of 2007 (subtitle C of title XII of Public Law 110-181; 8 U.S.C. 1157 note), as amended by section 1 of Public Law 110-242 (112 Stat. 1567) and section 8120 of the Department of Defense Appropriations Act, 2010 (Public Law 111-118; 123 Stat. 3457), as follows:

SEC. 1244. SPECIAL IMMIGRANT STATUS FOR CERTAIN IRAQIS.

(a) IN GENERAL.—Subject to subsection (c), the Secretary of Homeland Security, or, notwithstanding any other provision of law, the Secretary of State in consultation with the Secretary of Homeland Security, may provide an alien described in subsection (b) with the status

of a special immigrant under section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)), if the alien—

(1) or an agent acting on behalf of the alien, submits a petition for classification under section 203(b)(4) of such Act (8 U.S.C. 1153(b)(4));

(2) is otherwise eligible to receive an immigrant visa;

(3) is otherwise admissible to the United States for permanent residence (excluding the grounds for inadmissibility specified in section 212(a)(4) of such Act (8 U.S.C. 1182(a)(4)); and

(4) cleared a background check and appropriate screening, as determined by the Secretary of Homeland Security.

(b) ALIENS DESCRIBED.—

(1) PRINCIPAL ALIENS.—An alien is described in this subsection if the alien—

(A) is a citizen or national of Iraq;

(B) was or is employed by or on behalf of the United States Government in Iraq, on or after March 20, 2003, for not less than one year;

(C) provided faithful and valuable service to the United States Government, which is documented in a positive recommendation or evaluation, subject to paragraph (4), from the employee's senior supervisor or the person currently occupying that position, or a more senior person, if the employee's senior supervisor has left the employer or has left Iraq; and

(D) has experienced or is experiencing an ongoing serious threat as a consequence of the alien's employment by the United States Government.

(2) SPOUSES AND CHILDREN.—An alien is described in this subsection if the alien—

(A) is the spouse or child of a principal alien described in paragraph (1); and

(B) is accompanying or following to join the principal alien in the United States.

(3) TREATMENT OF SURVIVING SPOUSE OR CHILD.—An alien is described in subsection (b) if the alien—

(A) was the spouse or child of a principal alien described in paragraph (1) who had a petition for classification approved pursuant to this section or section 1059 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 8 U.S.C. 1101 note), which included the alien as an accompanying spouse or child; and

(B) due to the death of the principal alien—

(i) such petition was revoked or terminated (or otherwise rendered null); and

(ii) such petition would have been approved if the principal alien had survived.

(4) APPROVAL BY CHIEF OF MISSION REQUIRED.—A recommendation or evaluation required under paragraph (1)(C) shall be accompanied by approval from the Chief of

Mission, or the designee of the Chief of Mission, who shall conduct a risk assessment of the alien and an independent review of records maintained by the United States Government or hiring organization or entity to confirm employment and faithful and valuable service to the United States Government prior to approval of a petition under this section.

(c) NUMERICAL LIMITATIONS.—

(1) IN GENERAL.—The total number of principal aliens who may be provided special immigrant status under this section may not exceed 5,000 per year for fiscal years 2008 through 2012.

(2) EXCLUSION FROM NUMERICAL LIMITATIONS.—Aliens provided special immigrant status under this section shall not be counted against any numerical limitation under sections 201(d), 202(a), or 203(b)(4) of the Immigration and Nationality Act (8 U.S.C. 1151(d), 1152(a), and 1153(b)(4)).

(3) CARRY FORWARD.—

(A) FISCAL YEARS 2008 THROUGH 2011.—If the numerical limitation specified in paragraph (1) is not reached during a given fiscal year referred to in such paragraph (with respect to fiscal years 2008 through 2011), the numerical limitation specified in such paragraph for the following fiscal year shall be increased by a number equal to the difference between—

(i) the numerical limitation specified in paragraph (1) for the given fiscal year; and

(ii) the number of principal aliens provided special immigrant status under this section during the given fiscal year.

(B) FISCAL YEARS 2012 AND 2013.—If the numerical limitation specified in paragraph (1) is not reached in fiscal year 2012, the total number of principal aliens who may be provided special immigrant status under this section for fiscal year 2013 shall be equal to the difference between—

(i) the numerical limitation specified in paragraph (1) for fiscal year 2012; and

(ii) the number of principal aliens provided such status under this section during fiscal year 2012.

(C) ADDITIONAL FISCAL YEARS.—Notwithstanding subparagraphs (A) and (B), and consistent with subsection (b), any unused balance of the total number of principal aliens who may be provided special immigrant status under this subsection in fiscal years 2008 through 2012 may be carried forward and provided through the end of fiscal year 2018, except that—

(i) the one-year period during which a principal alien must have been employed in accordance with subsection (b)(1) shall be entirely during the period from March 20, 2003 through September 30, 2013; and

(ii) a principal alien seeking special immigrant status under this subparagraph shall apply to the Chief of Mission in accordance with subsection (b)(4) no later than September 30, 2017.

(d) VISA AND PASSPORT ISSUANCE AND FEES.—Neither the Secretary of State nor the Secretary of Homeland Security may charge an alien described in subsection (b) any fee in connection with an application for, or issuance of, a special immigrant visa. The Secretary of State shall make a reasonable effort to ensure that aliens described in this section who are issued special immigrant visas are provided with the appropriate series Iraqi passport necessary to enter the United States.

(e) PROTECTION OF ALIENS.—The Secretary of State, in consultation with the heads of other relevant Federal agencies, shall make a reasonable effort to provide an alien described in this section who is applying for a special immigrant visa with protection or the immediate removal from Iraq, if possible, of such alien if the Secretary determines after consultation that such alien is in imminent danger.

(f) ELIGIBILITY FOR ADMISSION UNDER OTHER CLASSIFICATION.—No alien shall be denied the opportunity to apply for admission under this section solely because such alien qualifies as an immediate relative or is eligible for any other immigrant classification.

(g) RESETTLEMENT SUPPORT.—Iraqi aliens granted special immigrant status described in section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)) shall be eligible for resettlement assistance, entitlement programs, and other benefits available to refugees admitted under section 207 of such Act (8 U.S.C. 1157) to the same extent, and for the same periods of time, as such refugees.

(h) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect the authority of the Secretary of Homeland Security under section 1059 of the National Defense Authorization Act for Fiscal Year 2006.

Section 1207 would extend for five years the Afghan Special Immigrant Visa (SIV) program authorized in section 602(b) of the Afghan Allies Protection Act of 2009 (Public Law 111-8). Section 602 authorized a number of SIVs for qualifying aliens which will be used within the available time period. The program needs to not only be extended through the end of fiscal year (FY) 2019, but the visas available per year need to be increased from 1,500 to 3,000 for FY 2014-2018. The proposed amendment would achieve this; authorize the carry-over of all unused visas through FY 2019; and set the cut-off date for eligible employment of December 31, 2014.

Changes to Existing Law: Section 1207 would amend section 602 of the Afghan Allies Protection Act of 2009 (title VI of Public Law 111-8; 8 U.S.C. 1101 note), as amended by section 8120(a) of the Department of Defense Appropriations Act, 2010 (Public Law 111-118; 123 Stat. 3457), as follows:

SEC. 602. PROTECTION FOR AFGHAN ALLIES.

(a) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term "appropriate committees of Congress" means—

(1) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on the Judiciary of the Senate; and

(2) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on the Judiciary of the House of Representatives.

(b) SPECIAL IMMIGRANT STATUS FOR CERTAIN AFGHANS.—

(1) IN GENERAL.—Subject to paragraph (3), the Secretary of Homeland Security, or, notwithstanding any other provision of law, the Secretary of State in consultation with the Secretary of Homeland Security, may provide an alien described in subparagraph (A), (B), or (C) of paragraph (2) with the status of a special immigrant under section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)), if the alien—

(A) or an agent acting on behalf of the alien, submits a petition for classification under section 203(b)(4) of such Act (8 U.S.C. 1153(b)(4));

(B) is otherwise eligible to receive an immigrant visa;

(C) is otherwise admissible to the United States for permanent residence (excluding the grounds for inadmissibility specified in section 212(a)(4) of such Act (8 U.S.C. 1182(a)(4)); and

(D) clears a background check and appropriate screening, as determined by the Secretary of Homeland Security.

(2) ALIENS DESCRIBED.—

(A) PRINCIPAL ALIENS.—An alien is described in this subparagraph if the alien—

(i) is a citizen or national of Afghanistan;

(ii) was or is employed by or on behalf of the United States Government in Afghanistan on or after October 7, 2001, for not less than one year;

(iii) provided faithful and valuable service to the United States Government, which is documented in a positive recommendation or evaluation, subject to subparagraph (D), from the employee's senior supervisor or the person currently occupying that position, or a more senior person, if the employee's senior supervisor has left the employer or has left Afghanistan; and

(iv) has experienced or is experiencing an ongoing serious threat as a consequence of the alien's employment by the United States Government.

(B) SPOUSE OR CHILD.—An alien is described in this subparagraph if the alien—

(i) is the spouse or child of a principal alien described in subparagraph (A); and

(ii) is accompanying or following to join the principal alien in the United States.

(C) SURVIVING SPOUSE OR CHILD.—An alien is described in this subparagraph if the alien—

(i) was the spouse or child of a principal alien described in subparagraph (A) who had a petition for classification approved pursuant

to this section or section 1059 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 8 U.S.C. 1101 note) which included the alien as an accompanying spouse or child; and

(ii) due to the death of the principal alien—

(I) such petition was revoked or terminated (or otherwise rendered null); and

(II) such petition would have been approved if the principal alien had survived.

(D) APPROVAL BY CHIEF OF MISSION REQUIRED.—A recommendation or evaluation required under subparagraph (A)(iii) shall be accompanied by approval from the appropriate Chief of Mission, or the designee of the appropriate Chief of Mission, who shall conduct a risk assessment of the alien and an independent review of records maintained by the United States Government or hiring organization or entity to confirm employment and faithful and valuable service to the United States Government prior to approval of a petition under this section.

(3) NUMERICAL LIMITATIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (C), the total number of principal aliens who may be provided special immigrant status under this section may not exceed 1,500 per year for each of the fiscal years 2009, 2010, 2011, 2012, and 2013.

(B) EXCLUSION FROM NUMERICAL LIMITATIONS.—Aliens provided special immigrant status under this subsection shall not be counted against any numerical limitation under sections 201(d), 202(a), or 203(b)(4) of the Immigration and Nationality Act (8 U.S.C. 1151(d), 1152(a), and 1153(b)(4)).

(C) CARRY FORWARD.—

(i) FISCAL YEARS 2009 THROUGH 2013.—If the numerical limitation specified in subparagraph (A) is not reached during a given fiscal year, with respect to fiscal year 2009, 2010, 2011, 2012, or 2013, the numerical limitation specified in such subparagraph for the following fiscal year shall be increased by a number equal to the difference between—

(I) the numerical limitation specified in subparagraph (A) for the given fiscal year; and

(II) the number of principal aliens provided special immigrant status under this section during the given fiscal year.

(ii) FISCAL YEAR 2014.—If the numerical limitation determined under clause (i) is not reached in fiscal year 2013, the total number of principal aliens who may be provided special immigrant status under this subsection for fiscal year 2014 shall be equal to the difference between—

(I) the numerical limitation determined under clause (i) for fiscal year 2013; and

(II) the number of principal aliens provided such status under this section during fiscal year 2013.

(D) ADDITIONAL FISCAL YEARS.—Notwithstanding subparagraph (C), for each of the fiscal years 2014 through 2018, the total number of principal aliens who may be provided special immigrant status under this section may not exceed 3,000 per year, except that any unused balance of the total number of principal aliens who may be provided special immigrant status in fiscal years 2014 through 2018, in addition to any unused balance of the total number of principal aliens who may be provided special immigrant status under subparagraph (A) in fiscal years 2009 through 2013, may be carried forward and provided through the end of fiscal year 2019, except that—

(i) the one-year period during which a principal alien must have been employed in accordance with paragraph (2)(A)(ii) shall be entirely during the period from October 7, 2001 through December 31, 2014; and

(ii) a principal alien seeking special immigrant status under this subparagraph shall apply to the Chief of Mission in accordance with paragraph (2)(D) no later than September 30, 2015.

(4) PROHIBITION ON FEES.—The Secretary of Homeland Security or the Secretary of State may not charge an alien described in subparagraph (A), (B), or (C) of paragraph (2) any fee in connection with an application for, or issuance of, a special immigrant visa under this section.

(5) ASSISTANCE WITH PASSPORT ISSUANCE.—The Secretary of State shall make a reasonable effort to ensure that an alien described in subparagraph (A), (B), or (C) of paragraph (2) who is issued a special immigrant visa pursuant to this subsection is provided with the appropriate series Afghan passport necessary to enter the United States.

(6) PROTECTION OF ALIENS.—The Secretary of State, in consultation with the heads of other appropriate Federal agencies, shall make a reasonable effort to provide an alien described in subparagraph (A), (B), or (C) of paragraph (2) who is seeking special immigrant status under this subsection protection or to immediately remove such alien from Afghanistan, if possible, if the Secretary determines, after consultation, that such alien is in imminent danger.

(7) OTHER ELIGIBILITY FOR IMMIGRANT STATUS.—No alien shall be denied the opportunity to apply for admission under this subsection solely because such alien qualifies as an immediate relative or is eligible for any other immigrant classification.

(8) RESETTLEMENT SUPPORT.—A citizen or national of Afghanistan who is granted special immigrant status described in section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)) shall be eligible for resettlement assistance, entitlement programs, and other benefits available to refugees admitted under section 207 of such Act (8 U.S.C. 1157) to the same extent, and for the same periods of time, as such refugees.

(9) ADJUSTMENT OF STATUS.—Notwithstanding paragraph (2), (7), or (8) of subsection (c) of section 245 of the Immigration and Nationality Act (8 U.S.C. 1255), the

Secretary of Homeland Security may adjust the status of an alien described in subparagraph (A), (B), or (C) of paragraph (2) of this subsection or in section 1244(b) of the Refugee Crisis in Iraq Act of 2007 (Public Law 110–181; 122 Stat. 397) to that of an alien lawfully admitted for permanent residence under subsection (a) of such section 245 if the alien—

(A) was paroled or admitted as a nonimmigrant into the United States; and

(B) is otherwise eligible for special immigrant status under—

(i)(I) this subsection; or

(II) such section 1244(b); and

(ii) the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(10) REPORT ON IMPLEMENTATION AND AUTHORITY TO CARRY OUT ADMINISTRATIVE MEASURES.—

(A) REQUIREMENT FOR REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security and the Secretary of State, in consultation with the Secretary of Defense, shall submit to the appropriate committees of Congress a report on the implementation of this subsection.

(B) CONTENT OF REPORT.—The report required by subparagraph (A) shall describe actions taken, and additional administrative measures that may be needed, to ensure the integrity of the program established under this subsection and the national security interests of the United States related to such program.

(C) AUTHORITY TO CARRY OUT ADMINISTRATIVE MEASURES.—The Secretary of Homeland Security and the Secretary of State shall implement any additional administrative measures described in subparagraph (B) as they may deem necessary and appropriate to ensure the integrity of the program established under this subsection and the national security interests of the United States related to such program.

(11) ANNUAL REPORT ON USE OF SPECIAL IMMIGRANT STATUS.—

(A) REQUIREMENT.—Not later than 120 days after the date of the enactment of this Act, and annually thereafter, the Secretary of Homeland Security shall submit to the appropriate committees of Congress a report on the number of citizens or nationals of Afghanistan or Iraq who have applied for status as special immigrants under this subsection or section 1244 of the Refugee Crisis in Iraq Act of 2007 (Public Law 110–181; 122 Stat. 396).

(B) CONTENT.—Each report required by subparagraph (A) submitted in a fiscal year shall include the following information for the previous fiscal year:

(i) The number of citizens or nationals of Afghanistan or Iraq who submitted an application for status as a special immigrant pursuant to this section or section 1244 of the Refugee Crisis in Iraq Act of 2007 (Public Law 110–181; 122 Stat. 396), disaggregated—

(I) by the number of principal aliens applying for such status; and

(II) by the number of spouses and children of principal aliens applying for such status.

(ii) The number of applications referred to in clause (i) that—

(I) were approved; or

(II) were denied, including a description of the basis for each denial.

(c) INFORMATION REGARDING CITIZENS OR NATIONALS OF AFGHANISTAN EMPLOYED BY THE UNITED STATES OR FEDERAL CONTRACTORS IN AFGHANISTAN.—

(1) REQUIREMENT TO COMPILE INFORMATION.—

(A) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, the Administrator of the United States Agency for International Development, the Secretary of Defense, the Secretary of Homeland Security, the Secretary of State, and the Secretary of the Treasury shall—

(i) review internal records and databases of their respective agencies for information that can be used to verify employment of citizens or nationals of Afghanistan by the United States Government; and

(ii) request from each prime contractor or grantee that has performed work in Afghanistan since October 7, 2001, under a contract, grant, or cooperative agreement with their respective agencies that is valued in excess of $25,000, information that may be used to verify the employment of such citizens or nationals by such contractor or grantee.

(B) INFORMATION REQUIRED.—To the extent data is available, the information referred to in subparagraph (A) shall include the name and dates of employment of, biometric data for, and other data that can be used to verify the employment of each citizen or national of Afghanistan who has performed work in Afghanistan since October 7, 2001, under a contract, grant, or cooperative agreement with an executive agency.

(2) REPORT ON ESTABLISHMENT OF DATABASE.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Administrator of the United States Agency for International Development, the Secretary of Homeland Security, the Secretary of State, and the Secretary of the Treasury, shall submit to the appropriate committees of Congress a report examining the options for establishing a unified and classified database of information related to contracts, grants, or cooperative agreements entered into by executive agencies for the performance of work in Afghanistan since October 7, 2001, including the information described and collected under paragraph (1), to be used by relevant Federal departments and agencies to adjudicate refugee, asylum, special immigrant visa, and other immigration claims and applications.

(3) REPORT ON NONCOMPLIANCE.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to the appropriate committees of Congress a report that describes—

(A) the inability or unwillingness of any contractor or grantee to provide the information requested under paragraph (1)(A)(ii); and

(B) the reasons that such contractor or grantee provided for failing to provide such information.

(4) EXECUTIVE AGENCY DEFINED.—In this subsection, the term "executive agency" has the meaning given that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

TITLE XIII—OTHER AUTHORIZATIONS

Subtitle A—Military Programs

Section 1301 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 2014.

Section 1302 would authorize appropriations for the National Defense Sealift Fund in the amount equal to the budget authority requested in the President's Budget for fiscal year 2014.

Section 1303 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 2014.

Section 1304 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 2014.

Section 1305 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 2014.

Section 1306 would authorize appropriations for the Defense Inspector General in amounts equal to the budget authority requested in the President's Budget for fiscal year 2014.

Section 1307 would authorize appropriations for the Defense Health Program in amounts equal to the budget authority requested in the President's Budget for fiscal year 2014. However, this bill assumes enactment of legislation contained in section 701 to phase in increases in TRICARE Prime enrollment fees, increases in deductibles and adjustments to the catastrophic cap, and adds new annual fees for TRICARE Standard/Extra enrollees. Section 701 would also adjust the prescription drug co-payment for active duty families and all retirees regardless of age

of the beneficiary. Upon enactment of section 701, the authorization and appropriation would be reduced by approximately $297,000,000.

Subtitle B—National Defense Stockpile

Section 1311 would provide authority to acquire strategic and critical materials for the National Defense Stockpile (NDS).

The three materials anticipated to be acquired have been identified by the NDS Manager to meet the military, industrial, and essential civilian needs of the United States as described in the NDS Requirements Report and discussed below.

Ferroniobium. Ferroniobium is utilized in high strength, low alloy steels used in the hulls of Navy vessels, including the CVN21 type air craft carriers and DDG1000 type guided missile destroyers, and weapons systems, including the Patriot-Medium Extended Air Defense System. The United States is wholly reliant on imports for the niobium used to produce ferroniobium; there are no viable substitutes.

Dysprosium Metal. Dysprosium metal is used as an alloying element in the production of neodymium-iron-boron magnets used in the Joint Direct Attack Munitions (JDAMS) missile. The United States is completely dependent for it need for dysprosium metal; and China is the largest producer of the metal. Terbium may be substituted for dysprosium metal; however, terbium is less available in the world markets and more expensive.

Yttrium Oxide. Yttrium Oxide is used in the phosphors for visual displays and lighting, and the ceramic materials used in lasers for range finders and target designators. Yttrium also is a key ingredient for materials used in high temperature combustion systems such as jet engines. The US is completely dependent on yttrium oxide imports. China provides 63% of United States needs, with the remainder obtained from Japan, France, and Austria. Substitutes are available for some applications, but they are generally less effective.

Budget Implications: These requirements will increase obligations by $22 million between Fiscal Years 2015 and 2019 over the PB 2014 baseline.

OBLIGATION PLAN for PROPOSED NEW NDS MATERIALS ($MILLIONS)							
Material	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**Total**
Ferro-Niobium	0.0	4.78	4.78	3.84	3.84	1.61	18.85
Dysprosium Metal	0.0	.75	0.0	0.0	0.0	0.0	.75

Yttrium Oxide	0.0	.96	.96	.48	0.0	0.0	2.40
Proposed Acquisitions	0.0	6.49	5.74	4.32	3.84	1.61	22.0
PB 14 Baseline	42.590	44.61	44.48	44.54	40.000	37.90	254.12
PB 14 Adjusted	42.59	51.10	50.22	48.86	43.84	39.51	276.12

Changes to Existing Law: Section 1311 would make the following changes to section 1411 of the National Defense Authorization Act for Fiscal Year 2012:

SEC. 1411. AUTHORIZED USES OF NATIONAL DEFENSE STOCKPILE FUNDS.

(a) OBLIGATION OF STOCKPILE FUNDS.--During fiscal year 2012, the National Defense Stockpile Manager may obligate up to $50,107,320 of the funds in the National Defense Stockpile Transaction Fund established under subsection (a) of section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h) for the authorized uses of such funds under subsection (b)(2) of such section, including the disposal of hazardous materials that are environmentally sensitive.

(b) ADDITIONAL OBLIGATIONS.--The National Defense Stockpile Manager may obligate amounts in excess of the amount specified in subsection (a) if the National Defense Stockpile Manager notifies Congress that extraordinary or emergency conditions necessitate the additional obligations. The National Defense Stockpile Manager may make the additional obligations described in the notification after the end of the 45-day period beginning on the date on which Congress receives the notification.

(c) ACQUISITION AUTHORITY.—(1) Using funds available in the National Defense Stockpile Transaction Fund, the National Defense Stockpile Manager may acquire the following materials determined to be strategic and critical materials required to meet the defense, industrial, and essential civilian needs of the United States:

(A) Ferroniobium.

(B) Dysprosium Metal.

(C) Yttrium Oxide.

(2) The National Defense Stockpile Manager may use up to $22,000,000 of the National Stockpile Transaction Fund for acquisition of the materials specified in paragraph (1).

(3) The authority under this subsection is available for purchases during 2014 through 2019.

(~~c~~d) LIMITATIONS.--The authorities provided by this section shall be subject to such limitations as may be provided in appropriations Acts.

Subtitle C—Other Matters

Section 1321, within the funds authorized for operation and maintenance under section 507, 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 1322 would authorize appropriations for fiscal year 2014 for the Armed Forces Retirement Home in the amount equal to the budget authority requested in the President's Budget for fiscal year 2014.

TITLE XIV—UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT AMENDMENTS

Section 1401 would amend section 104 of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to add overseas civilian voters to a provision that currently requires States to accept or process absentee ballot requests from military voters received in the same calendar year as the Federal election. The inclusion of overseas civilian voters in this provision will make it consistent with other provisions of the Act.

This proposal would also allow valid voter registration applications or absentee ballot applications submitted by absent uniformed services voters and overseas voters during the preceding year of a scheduled election for Federal office to be accepted or processed, with respect to any election for Federal office. This will permit UOCAVA voters to timely register only once and receive an absentee ballot for any and all Federal elections for the full duration of the Federal election cycle.

Budget Implications: This proposal will not impact the Department of Defense's budget. The change to the law will not generate additional requirements for the President Budget submission. This is a budget neutral change.

Changes to Existing Law: Section 1401 would make the following changes to section 104 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–3), as amended:

SEC. 104. ~~PROHIBITION OF REFUSAL OF APPLICATIONS ON GROUNDS OF EARLY SUBMISSION~~ TREATMENT OF BALLOT REQUESTS.

(a) PROHIBITION OF APPLICATION ON GROUNDS OF EARLY SUBMISSION.—A State may not refuse to accept or process, with respect to any election for Federal office, any otherwise valid voter registration application or absentee ballot application (including the postcard form prescribed under section101) submitted by an absent uniformed services voter or overseas voter during a year on the grounds that the voter submitted the application before the first date on which the State otherwise accepts or processes such applications for that year submitted by absentee voters who are not members of the uniformed services or who do not reside outside the United States.

(b) APPLICATION TREATED AS VALID FOR SUBSEQUENT ELECTIONS.—

(1) IN GENERAL.—If a State accepts and processes a request for an absentee ballot by an absent uniformed services voter or overseas voter and the voter requests that the application be considered an application for an absentee ballot for each subsequent election for Federal office held in the State through the next regularly scheduled general election for Federal office (including any runoff elections which may occur as a result of the outcome of such general election), and any special elections for Federal office held in the State through the calendar year following such general election, the State shall provide an absentee ballot to the voter for each such subsequent election.

(2) EXCEPTION FOR VOTERS CHANGING REGISTRATION.—Paragraph (1) shall not apply with respect to a voter registered to vote in a State for any election held after the voter notifies the State that the voter no longer wishes to be registered to vote in the State or after the State determines that the voter has registered to vote in another State.

(c) OFFICIAL POST CARD FORM.—The Presidential designee shall ensure that the official postcard form (prescribed under section 101) enables a voter using the form to—

(1) request an absentee ballot for—

(A) each election for Federal office held in a State through the next regularly scheduled general election for Federal office (including any runoff election which may occur as a result of the outcome of such general election); and

(B) any special election for Federal office held in the State through the calendar year following such general election; or

(2) request an absentee ballot for a specific election or elections for Federal office held in a State during the period described in paragraph (1).

Section 1402: Section 711 of the Consolidated Natural Resources Act of 2008 (Public Law 110-229, 122 Stat.754, 48 U.S.C. 1751) provided a Delegate to the United States House of Representatives from the Commonwealth of the Northern Mariana Islands. Citizens of the Commonwealth elect this Delegate during Federal general elections.

This proposal would treat the Commonwealth of the Northern Mariana Islands as a "State" for purposes of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and, thus, would permit absent uniformed services voters and overseas voters from the Northern Mariana Islands to use absentee registration procedures and to vote in general, special, primary, and runoff elections for the Federal office of Delegate to the House of Representatives in the same manner as provided for voters from the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

Under the provisions of the UOCAVA, uniformed servicemembers, members of the Merchant Marine, commissioned members of the National Oceanic and Atmospheric Administration and the Public Health Service, their spouse or dependent, and U.S. citizens

residing abroad are permitted to vote by absentee ballot in Federal elections in their State of residence. UOCAVA does not currently include the Commonwealth of the Northern Mariana Islands in the definition of "State" and, therefore, does not afford absent uniformed services voters and overseas voters from the Commonwealth its protections. Treatment of the Commonwealth as a "State" for purposes of UOCAVA would permit absent uniformed services voters and overseas voters from the Commonwealth to vote for the Delegate under the provisions of UOCAVA.

Budget Implications: This proposal will not impact the Department of Defense's budget. This proposal would permit absent uniformed services voters and overseas voters from the Northern Mariana Islands to use Federal absentee ballot registration procedures and vote in general, special, primary, and runoff elections for the Federal office of Delegate to the House of Representatives.

Changes to Existing Law: Section 1402 would make the following changes to section 107 of the Uniformed and Overseas Citizens Absentee Voting Act:

SEC. 107. DEFINITIONS.

As used in this title, the term—

(1) "absent uniformed services voter" means—

(A) a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(B) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and

(C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote;

* * * * * * *

(6) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, ~~and~~ American Samoa, and the Commonwealth of the Northern Mariana Islands;

(7) "uniformed services" means the Army, Navy, Air Force, Marine Corps, and Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration; and

(8) "United States", where used in the territorial sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, ~~and~~ American Samoa, and the Commonwealth of the Northern Mariana Islands.

Section 1403 would change the deadline to submit the annual report on the effectiveness of activities of the Federal Voting Assistance Program (FVAP) from March 31 of every year to June 30 of odd-numbered years. It also would clarify that the information submitted in the report should cover the previous calendar year – the year in which the regularly scheduled elections for Federal office occurred. Therefore, the changes would ensure that the report provides the best quality information about FVAP's program, voter registration and participation in the election and enhance the validity of post-election survey results.

The Department of Defense strongly believes that developing and publishing this report for odd-numbered calendar years in which few Federal elections occur does not provide sufficient information to warrant the time, effort and expense expended in preparing the report. Few elections for Federal office occur in odd-numbered years. In 2009 there were a total of only four elections for Federal office. Again in 2011, only four elections occurred. These special primary or general elections incurred low levels of voting activity and participation among overseas military and civilian voters.

Evaluation and analysis of FVAP activities for special primary or general elections requires the Department to obtain the election data from the local jurisdiction involved and, in many cases, the specific data required to make accurate analysis is not available or is not available in a timely manner. Analysis of odd-numbered year elections could lead to poor policy decisions based upon incomplete data and/or conclusions which may not be valid in even-numbered election years, which have greater public participation and FVAP activity.

In addition, the post-election survey results for even-numbered year reports and quadrennial analysis cannot be collected, processed, analyzed and reported by the current March 31 deadline. General elections for Federal office are held in November (potentially with some States conducting run-off elections for Federal office in December). The Department's survey instruments will be fielded in January and need to be open for at least three months to garner sufficient participation to make them statistically valid. Thus, the March 31 deadline provides little time after the elections to collect, synthesize and thoughtfully analyze post-election survey data to base program evaluations and policy decisions. Accordingly, the Department recommends that the reporting deadline be extended from March 31 to June 30, and that the report only be submitted in odd-numbered years.

Changes to Existing Law: Section 1403 would make the following changes to section 105A of the Uniformed and Overseas Citizens Absentee Voting Act:

SEC. 105A. REPORTING REQUIREMENTS.

* * * * * *

(b) ~~ANNUAL~~ BIENNIAL REPORT ON EFFECTIVENESS OF ACTIVITIES AND UTILIZATION OF CERTAIN PROCEDURES.—Not later than ~~March 31 of each year~~ June 30 of each odd-numbered year, the Presidential designee shall transmit to the President and to the relevant committees of Congress a report containing the following information with respect to the Federal election held during the preceding calendar year:

(1) An assessment of the effectiveness of activities carried out under section 103B, including the activities and actions of the Federal Voting Assistance Program of the Department of Defense, a separate assessment of voter registration and participation by absent uniformed services voters, a separate assessment of voter registration and participation by overseas voters who are not members of the uniformed services, and a description of the cooperation between States and the Federal Government in carrying out such section.

(2) A description of the utilization of voter registration assistance under 1566a of title 10, United States Code, which shall include the following:

(A) A description of the specific programs implemented by each military department of the Armed Forces pursuant to such section.

(B) The number of absent uniformed services voters who utilized voter registration assistance provided under such section.

(3) ~~In the case of a report submitted under this subsection in the year following a year in which a regularly scheduled general election for Federal office is held, a~~ A description of the utilization of the procedures for the collection and delivery of marked absentee ballots established pursuant to section 103A, which shall include the number of marked absentee ballots collected and delivered under such procedures and the number of such ballots which were not delivered by the time of the closing of the polls on the date of the election (and the reasons such ballots were not so delivered).

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 ASSISTANCE PROGRAM

TITLE XXVI—GUARD AND RESERVE FORCES FACILITIES

TITLE XXVIII—MILITARY CONSTRUCTION GENERAL PROVISIONS

Subtitle A—Military Construction Program Changes

Section 2801: Unspecified minor construction (UMC) projects are military construction projects authorized by 10 U.S.C. 2805 that the Department may undertake without specific project authorization from Congress. This proposal consists of two parts that would increase various dollar thresholds for UMC projects and provide additional authority for specific types of UMC projects. This proposal would also streamline the language of section 2805 and improve internal consistency and references.

SUBSECTIONS (a), (b), AND (c): INCREASE TO GENERAL DOLLAR LIMITS AND THRESHOLDS

This proposal would increase several general UMC dollar limits in accordance with a generally recognized cost index. The National Defense Authorization Act for Fiscal Year (FY) 2008 (Pub. L. 110-181; enacted January 28, 2008), adjusted the basic general UMC threshold from $1.5 to $2.0 million in apparent recognition of construction market escalation since the previous adjustment in 1991. With the National Defense Authorization Act for FY 2012, the provision for life/health/safety projects using Operation and Maintenance (O&M) funding was eliminated. However, the other three UMC thresholds specified in section 2805 have remained unchanged since their last adjustments (in 1996 and 2002), and cost escalation has rendered them obsolete as well. The following table reflects all of the UMC dollar thresholds, the year each was last amended, and the subsequent change in the Bureau of Labor Statistics Consumer Price Index (CPI) as of June 2011.

10 U.S.C. 2805 subsection	Current limit	Year last amended	CPI* in year last amended	CPI* June 2011	CPI* % chg	Adjusted limit	Proposed limit
(a)(2) (1st sentence)	$2,000,000	2008	218.8	225.7	+3%	$2,063,071	no change
(a)(2) (2nd sentence)	$3,000,000	1996	156.7	225.7	+44%	$4,320,996	$4,000,000
(b)(1)	$750,000	2002	179.9	225.7	+25%	$940,939	$1,000,000
(c)	$750,000	2002	179.9	225.7	+25%	$940,939	$1,000,000

*Consumer Price Index for all urban consumers—U.S. average (U.S. Bureau of Labor Statistics)

The CPI has increased 44 percent since 1996 and 25 percent since 2002. Without an associated amendment to the thresholds, this general cost escalation has significantly degraded the Department's ability to correct life/health/safety-threatening deficiencies and to undertake small, urgent projects using Operation and Maintenance funding.

Based upon the increase in the consumer price index as displayed in the above table, this proposal would accomplish the following:

- For unspecified minor construction projects to correct deficiencies that are life/health/safety-threatening authorized in the second sentence of subsection (a)(2) of section 2805, the proposal would increase the project limit from $3,000,000 to $4,000,000.

- For unspecified minor construction projects for which congressional notification is required per subsection (b)(1) of section 2805, the proposal would increase the threshold from $750,000 to $1,000,000.

- For unspecified minor construction projects authorized to be funded with Operation and Maintenance appropriations per subsection (c) of section 2805, the proposal would increase the limit from $750,000 to $1,000,000.

SUBSECTION (d): INCREASE TO LABORATORY REVITALIZATION THRESHOLDS

This proposal would increase one of the UMC dollar thresholds for laboratory projects. Subsection (d) of section 2805, which was passed as part of the FY 2008 Defense Authorization Act, recognized that specialized laboratory and technical facilities have much higher than normal per square foot construction costs. Section 2805(d) provided increased ceilings for certain laboratory construction projects. This amendment would raise the limit for O&M-funded laboratory UMC projects to the same level as that for laboratory UMC projects funded from military construction appropriations, a level that more correctly reflects the cost of research facilities.

This authority is needed because the speed of technological advancement continues to out-pace current military construction programming cycles, leaving a void in the laboratories' ability to achieve and deliver rapid solutions to warfighter needs. Department of Defense laboratories depend on the ability to upgrade facilities and infrastructure quickly provided by this authority to meet emergent mission requirements in support of transformational initiatives requested by the Department of Defense.

Use of this authority in FYs 2008-2010 has resulted in rapid development of technologies in technical areas: Aerospace Research, Computational Physics, Electromagnetic Effects, Energetics, Directed Energy, Soldier and Equipment Development, Maritime Surveillance, and

Unmanned Air Systems. It also supported and advanced new missions involving Rapid Prototyping, Irregular Warfare, and Specialized Testing Systems Integration of Unmanned Air Systems.

Specially, subsection (d) of the proposal would make the following changes:

- Subsection (d)(1)(A) would raise the threshold from $2 million to $4 million.

- Subsection (d)(1)(B) would conform the definition of unspecified military construction appearing in subsection (a) of 2805 to the exception created in section 2805(d).

- Subsection (d)(2) would permit the use of this authority to construct projects which are still in the design or competitive bidding phase so that the laboratory could adjust the scope or size of the construction project prior to the actual beginning of construction as long as construction has not been initiated by the date the statute passes the Congress.

Budget Implications:
Subsections (a), (b), and (c):
An increase to the remaining UMC thresholds does not generate cost implications, but rather recognizes the implications of inflation on DoD construction. Increasing the remaining UMC thresholds would allow the Secretary to more effectively respond to urgent mission requirements and critical life/health/safety deficiencies with properly-sized and scoped facilities, using available appropriations.

Subsection (d):
There are no budgetary impacts associated with the implementation of the proposed amendment. Funds for any construction project authorized by this amendment would have already been appropriated as operation and maintenance (O&M) funds to a specific laboratory or budgeted as overhead funds by a working capital funded organization.

There is inherent accountability and budgetary discipline associated with this provision because any construction project must be paid from O&M or overhead funds, which are very scarce at laboratories. Consequently, if a laboratory director chooses to proceed with an unspecified military construction project under this authority he or she is spending "scarce money" which introduces an inherent level of discipline into any decision making process.

Changes to Existing Law: Section 2801 would make the following changes to section 2805 of title 10, United States Code:

§ 2805. Unspecified minor construction

(a) AUTHORITY TO CARRY OUT UNSPECIFIED MINOR MILITARY CONSTRUCTION PROJECTS.—(1) Within an amount equal to 125 percent of the amount authorized by law for such purpose, the Secretary concerned may carry out unspecified minor military construction projects not otherwise authorized by law.

(2) An unspecified minor military construction project is a military construction project that has an approved cost equal to or less than $2,000,000. However, if the military construction project is intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening, an unspecified minor military construction project may have an approved cost equal to or less than ~~$3,000,000~~ **the minor military construction exception threshold**.

(3) For purposes of this section, the minor military construction exception threshold is $4,000,000.

(b) APPROVAL AND CONGRESSIONAL NOTIFICATION.—(1) An unspecified minor military construction project costing more than ~~$750,000~~ **the amount specified in subsection (c)** may not be carried out under this section unless approved in advance by the Secretary concerned.

(2) When a decision is made to carry out an unspecified minor military construction project to which paragraph (1) is applicable, the Secretary concerned shall notify in writing the appropriate committees of Congress of that decision, of the justification for the project, and of the estimated cost of the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by the committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(c) USE OF OPERATION AND MAINTENANCE FUNDS.—The Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified minor military construction project costing not more than ~~$750,000~~ **$1,000,000**.

(d) LABORATORY REVITALIZATION.—(1) For the revitalization and recapitalization of laboratories owned by the United States and under the jurisdiction of the Secretary concerned, the Secretary concerned may obligate and expend—

(A) from appropriations available to the Secretary concerned for operation and maintenance, amounts necessary to carry out an unspecified minor military construction project costing not more than ~~$2,000,000~~ **$4,000,000, notwithstanding subsection (c),** or

(B) from appropriations available to the Secretary concerned for military construction not otherwise authorized by law or from funds authorized to be made available under section 219(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 10 U.S.C. 2358 note), amounts necessary to carry out an unspecified minor military construction project costing not more than $4,000,000.

(2) **For purposes of this subsection, an unspecified minor military construction project is a military construction project that (notwithstanding subsection (a)) has an approved cost equal to or less than $4,000,000.** For an unspecified minor military construction project conducted pursuant to this subsection, $2,000,000 shall be deemed to be the amount specified in subsection (b)(1) regarding when advance approval of the project by the Secretary concerned and congressional notification is required. The Secretary of Defense shall establish procedures for the review and approval of requests from the Secretary of a military department to carry out a construction project under this subsection.

(3) Not later than February 1, 2014, the Secretary of Defense shall submit to the congressional defense committees a report on the use of the authority provided by this subsection. The report shall include a list and description of the construction projects carried out under this subsection, including the location and cost of each project.

(4) In this subsection, the term "laboratory" includes—

(A) a research, engineering, and development center; and

(B) a test and evaluation activity.

(5) The authority to carry out a project under this subsection expires on September 30, 2016.

(e) PROHIBITION ON USE FOR NEW HOUSING UNITS.—Military family housing projects for construction of new housing units may not be carried out under the authority of this section.

Section 2802: Unspecified minor construction (UMC) is military construction below a prescribed dollar cost threshold per project that the Department of Defense (DoD) may undertake without specific project authorization from Congress. This proposal would allow the Department to normalize the utility of UMC authority across the Department worldwide by accommodating location-based differences in construction cost, using area construction cost indices for specified (major) military construction projects.

Construction costs can vary widely by location due to variations in cost for labor, materials, equipment, and design requirements for factors such as climate and seismic activity. To account for this, the Department annually develops and publishes area construction cost indices (called area cost factors, or ACFs) for the purpose of adjusting national-average historical facility costs to a specific project location. This allows increased accuracy in estimating the cost of military construction projects during the planning and budgeting process when detailed design information is not available.

ACFs are developed through a process of collecting and comparing cost data on construction labor rates, materials, and equipment from various locations, as well as comparing other factors that impact construction costs such as climate, level of seismic activity, and labor availability. A given ACF represents the relative cost of construction at a specific location compared to the national average. The DoD-published ACF values for Fiscal Year 2012 range from a low of 0.72 at Longhorn Army Ammunition Plant in Marshall, Texas, to a high of 4.37 at

Eareckson Air Force Base, Alaska, with the national average of surveyed cities equal to 1.0.

Although the Department applies ACFs to cost estimates (and subsequent authorization requests) for specified (major) construction projects, there is no equivalent provision for minor construction authority. The UMC cost limitations prescribed by 10 U.S.C. section 2805 do not account for local variations in construction costs, and therefore impose differential constraints on the utility and effectiveness of the minor construction program across the Department worldwide. Using the example locations above, the $2 million limitation on minor projects would provide six times the effective buying power at Longhorn Army Ammunition Plant than at Eareckson Air Force Base, where the high cost of construction renders the use of minor construction impractical.

Application of the ACF to the UMC program would normalize the usefulness of UMC projects around the world, and enable the Department to more equitably and broadly realize the intended benefits of UMC authority. This approach is wholly consistent with the longstanding flexibility Congress granted to the military family housing program in 10 U.S.C. section 2825, Improvements to Family Housing Units. Section 2825 essentially serves as the UMC authority for the military family housing program, and establishes funding authority that varies based on the "area construction cost index as developed by the Department of Defense for the location concerned". This proposal extends that concept to the mainstream UMC program.

Changes to Existing Law: Section 2802 would make the following change to section 2805 of title 10, United States Code:

§ 2805. Unspecified minor construction

(a) Authority to carry out unspecified minor military construction projects.

(1) Within an amount equal to 125 percent of the amount authorized by law for such purpose, the Secretary concerned may carry out unspecified minor military construction projects not otherwise authorized by law.

(2) An unspecified minor military construction project is a military construction project that has an approved cost equal to or less than $ 2,000,000. However, if the military construction project is intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening, an unspecified minor military construction project may have an approved cost equal to or less than $ 3,000,000.

(b) Approval and congressional notification.

(1) An unspecified minor military construction project costing more than $ 750,000 may not be carried out under this section unless approved in advance by the Secretary concerned. This paragraph shall apply even though the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.

(2) When a decision is made to carry out an unspecified minor military construction project to which paragraph (1) is applicable, the Secretary concerned shall notify in writing the appropriate committees of Congress of that decision, of the justification for the project, and of the estimated cost of the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by the committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this *title [10 USCS § 480*].

(c) Use of operation and maintenance funds. The Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified minor military construction project costing not more than $ 750,000.

(d) Laboratory revitalization.

(1) For the revitalization and recapitalization of laboratories owned by the United States and under the jurisdiction of the Secretary concerned, the Secretary concerned may obligate and expend--

(A) from appropriations available to the Secretary concerned for operation and maintenance, amounts necessary to carry out an unspecified minor military construction project costing not more than $ 2,000,000; or

(B) from appropriations available to the Secretary concerned for military construction not otherwise authorized by law or from funds authorized to be made available under section 219(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; *10 U.S.C. 2358* note), amounts necessary to carry out an unspecified minor military construction project costing not more than $ 4,000,000.

(2) For an unspecified minor military construction project conducted pursuant to this subsection, $ 2,000,000 shall be deemed to be the amount specified in subsection (b)(1) regarding when advance approval of the project by the Secretary concerned and congressional notification is required. The Secretary of Defense shall establish procedures for the review and approval of requests from the Secretary of a military department to carry out a construction project under this subsection.

(3) Not later than February 1, 2014, the Secretary of Defense shall submit to the congressional defense committees a report on the use of the authority provided by this subsection. The report shall include a list and description of the construction projects carried out under this subsection, including the location and cost of each project.

(4) In this subsection, the term "laboratory" includes--

(A) a research, engineering, and development center; and

(B) a test and evaluation activity.

(5) The authority to carry out a project under this subsection expires on September 30, 2016.

(e) Prohibition on use for new housing units. Military family housing projects for construction of new housing units may not be carried out under the authority of this section.

(f) Adjustments for location. The dollar limitations specified in subsections (a) through (d) shall be adjusted to reflect the appropriate area construction cost index for military construction projects published by the Department of Defense. The appropriate cost index shall be the factor published during the prior fiscal year that applies to the location of the project.

Subtitle B—Real Property and Facilities Administration

Section 2811 would amend 10 U.S.C. 2667 to allow use of cash consideration deposited into the special account in the Treasury established by 10 U.S.C. 2667(e) to offset administrative costs incurred by the military departments in entering into and managing leases under this section and easements under 10 U.S.C. 2668.

Leasing of and granting easements on non-excess military real property provides substantial return of property value to the military departments for support of mission needs. The military departments provide upfront and long-term funding for transaction-related costs in order to realize such returns of property asset value. Neither section 2667 nor section 2668, however, provides authority for the military departments to use the special Treasury account for such costs.

10 U.S.C. 2695 allows for the recovery of administrative expenses from the proceeds of certain real estate transactions, but the language is vague and could be construed to limit the reimbursement only to costs incurred prior to the closing of a realized transaction. The military departments incur expenses related to appraisals, surveys, marketing, solicitation, feasibility studies, environmental planning and due diligence, regardless of whether a transaction closes, and post-execution expenses, such as monitoring and compliance. Under sections 2667 and 2668, the military departments should be able to recoup such expenses from cash consideration irrespective of whether the real estate transaction for which they are incurred comes to pass or not.

Changes to Existing Law: Section 2811 would make the following changes to section 2667 of title 10, United States Code:

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

(a) LEASE AUTHORITY.— * * *

(b) CONDITIONS ON LEASES.— * * *

(c) TYPES OF IN-KIND CONSIDERATION.— * * *

(d) COMMUNITY SUPPORT FACILITIES AND COMMUNITY SUPPORT SERVICES UNDER LEASE; WAIVER.— * * *

(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.

(vi) Amounts as the Secretary considers necessary to cover program expenses incurred by the Secretary under this section and for easements under section 2668 of this title.

(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, 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).

(f) TREATMENT OF LESSEE INTEREST IN PROPERTY.— * * *
(g) SPECIAL RULES FOR BASE CLOSURE AND REALIGNMENT PROPERTY. — * * *
(h) COMPETITIVE PROCEDURES FOR SELECTION OF CERTAIN LESSEES; EXCEPTION. — * * *
(i) DEFINITIONS. — In this section:

(1) The term "community support facility" includes an acillary supporting facility (as that term is defined in section 2871(1) of this title).

(2) The term "community support services" includes revenue-generating food, recreational, lodging support services, and resale operations and other retail facilities and services intended to support a community.

(3) The term "military installation" has the meaning given such term in section 2687(e)(1) of this title.

(4) The term "program expenses" includes expenses related to developing, assessing, negotiating, executing, and managing lease and easement transactions, but does not include Government personnel costs.

~~(4)~~(5) The term "Secretary concerned" means—

(A) the Secretary of a military department, with respect to matters concerning that military department; and

(B) the Secretary of Defense, with respect to matters concerning Defense Agencies.

(j) EXCLUSION OF CERTAIN LANDS. — * * *

Section 2812 would authorize the Secretaries of the military departments to credit cash payments (received as compensation for utilities or services provided to eligible entities that operate family or military unaccompanied housing projects) to the appropriation or working capital account currently available for the purpose of furnishing such utilities or services. This change will ensure that such reimbursements remain available in current appropriations to meet Department of Defense (DoD) mission requirements, as budgeted, rather than being "lost" to the Services when credited to an expired account.

DoD installations provide privatized housing owners certain utilities and services on a reimbursable basis per section 2872a of title 10, United States Code. Section 2872a(c)(2)

currently requires that reimbursements received from eligible entities be credited to the appropriation or working capital account from which the cost of furnishing the utilities or services was originally paid. This reimbursement scheme presents a problem for the last billing period of the year. As utilities are traditionally—and by housing privatization agreement—billed and paid in arrears (i.e., after such services or utilities are provided), reimbursements received for the last month, quarter, or similar period in a fiscal year are depositied after the paying appropriation has expired. As such, the funds are not available for obligation.

To take a practical example: the installation provides a utility service in September of the fiscal year using its appropriated funds for that fiscal year. After providing the service, the installation bills the housing owner. The housing owner reimburses the installation, but now the new fiscal year has begun. Under section 2872a, the reimbursement—although received in the following fiscal year—must be credited to the prior fiscal year. Since the funds used to provide the utility service were one-year Operations & Maintenance funds, those funds are now expired and are not available to the installation (or the Air Force) for new obligations. From a practical standpoint, on a twelve-month contract, the installation has expended twelve months of its funds in providing utility services, but the installation receives only eleven months of reimbursement that are available for new obligations.

The installation cannot incur an obligation against the reimbursement received in the following fiscal year. Absent applicable specific statutory authority, OMB Circular A-11 (2011) prohibits agencies from recognizing budgetary authority in their reimbursable accounts based on reimbursable orders from non-Federal sources until after cash is received from the customer, either through an advance payment or actual reimbursement is made. Because, section 2872a does not provide contract authority to incur obligations in reliance on uncollected reimbursements, installations must cash manage obligations incurred to fill certain orders from non-Federal customers who have not made payments in advance.

The above requirements create a significant challenge for installations supporting privatized housing because reimbursements received early in a fiscal year for services provided in the prior fiscal year must be credited to expired operating accounts. The statute clearly authorizes such support on a reimbursable basis, which should have no fiscal impact on installations. However, this is not the case under the current statutory scheme. Some amount of operating funds appropriated for DoD purposes becomes unavailable to installations because a portion of the funds obligated to cash manage support provided under section 2872a are not reimbursed until after those funds expire, making the reimbursement unavailable for use and serving only to increase unobligated balances in an expired account. This results in an estimated loss of $6 million per year to Air Force installations.

This proposal would eliminate this loss by allowing reimbursement payments made for utilities and services to be credited to the appropriation or working capital account that is current

at the time the reimbursements are received, instead of to the appropriation account from which the services were originally funded.

The change is consistent with analogous authorities to credit certain reimbursements to current operating accounts. For example, reimbursement for DoD-provided medical care to civilians are credited to current accounts under authority of 10 U.S.C. 1079b.

Changes to Existing Law: Section 2812 would make the following change to section 2872a of title 10, United States Code:

§ 2872a. Utilities and services

(a) AUTHORITY TO FURNISH.—The Secretary concerned may furnish utilities and services referred to in subsection (b) in connection with any military housing acquired or constructed pursuant to the exercise of any authority or combination of authorities under this subchapter if the military housing is located on a military installation.

(b) COVERED UTILITIES AND SERVICES.—The utilities and services that may be furnished under subsection (a) are the following:

(1) Electric power.
(2) Steam.
(3) Compressed air.
(4) Water.
(5) Sewage and garbage disposal.
(6) Natural gas.
(7) Pest control.
(8) Snow and ice removal.
(9) Mechanical refrigeration.
(10) Telecommunications service.
(11) Firefighting and fire protection services.
(12) Police protection services.

(c) REIMBURSEMENT.—(1) The Secretary concerned shall be reimbursed for any utilities or services furnished under subsection (a).

(2) The amount of any cash payment received under paragraph (1) shall be credited to the appropriation or working capital account ~~from which the cost of furnishing the utilities or services concerned was paid~~ currently available for the purpose of furnishing utilities or services under subsection (a). Amounts so credited to an appropriation or account shall be merged with funds in such appropriation or account, and shall be available to the same extent, and subject to the same terms and conditions, as such funds.

Section 2813: Section 801 of the Military Construction Authorization Act, 1984 (Public Law 98-115, 97 Stat. 782) authorized the Secretaries of the military departments to enter into a contract for the lease of family housing units constructed near a military installation within the United States at which there is a shortage of military family housing. Leases, under this provision, were authorized for terms up to 20 years. This authority was subsequently codified in section 2835 of title 10, United States Code. The Department of the Navy (DON) has leased over 3,000 family housing units at eight locations under this authority. These leases were executed from the early 1980s to the mid 1990s. Section 2803 of the National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417, 122 Stat. 4719) added section 2835a to title 10, authorizing the use of "Section 801 housing" for unaccompanied personnel if there was no longer a need for military family housing.

The Navy is currently leasing 300 units of Section 801 military family housing from a private developer on Navy land within the fence line of the Port Hueneme location of Naval Base Ventura County (NBVC). The units are divided into two non-contiguous housing complexes, one of which is in the center of NBVC operational areas. The lease is divided into portions. The first is the in-lease, where the Navy leases the 300 units for use as military family housing. This in-lease term ends February 2014. At that point, the contract terms allow the Developer to lease these 300 housing units to the general public until the expiration of the Ground Lease in September 2033, at which time the Developer is responsible for demolishing the improvements at the Navy's discretion. The second portion is referred to as the "outlease."

Transition of the current inlease to an outlease, with housing made available to the general public, presents anti-terrorism/force protection (AT/FP) concerns. Additionally, NBVC has an enduring need for transient and unaccompanied housing which could be met by the existing Section 801 housing (following a Government investment in conversion). For these reasons, the Navy proposes to acquire the Section 801 housing for future conversion to use as berthing or lodging. Conversion of the existing Section 801 housing to such use would preclude the need for a significant military construction investment to construct such facilities to meet NBVC's need.

Section 2664 of title 10 requires that any acquisition of a real property interest by a military department be authorized by law; section 2822 requires that any acquisition of military family housing be specifically authorized by law. Accordingly, authorization by law is required in order for the Navy to terminate the outlease in advance of its expiration and acquire the existing housing.

The proposed subsection (a) would authorize the Navy to terminate the outlease and acquire the improvements.

Subsection (b) authorizes the continued use of the housing as authorized under sections 2835 and 2835a of title 10 pending funding and execution of a Navy project to permanently convert the housing to an alternative use.

Changes to Existing Law: Section 2813 would not change the text of existing law.

Section 2814 would extend the collaborative relationship between the Department of Defense (DoD) and Department of Veterans Affairs (VA) beyond the sharing of existing health care resources and permit proactive, joint planning and capital investment in shared medical facilities with the goal of improving access, continuity, quality and cost effectiveness of the direct health care provided to the Departments' respective beneficiaries. Joint construction and leasing of shared medical facilities to meet the combined requirements of both Departments fall outside of the existing statutory authority at 10 U.S.C. 1104 and 38 U.S.C. 8111 for DoD-VA resource sharing of existing health care resources. This legislation would permit the Departments to optimize expenditures to enable collaboration where the Secretaries determine it is in the best interest of the Departments to do so. There is a corresponding legislative proposal by VA, that includes the addition of a new section, 38 U.S.C. 8111B, to facilitate and permit this joint effort.

Subsection (a) of this proposal would create a new section under chapter 55 of title 10 to allow the Department of Defense to enter into agreements with the Department of Veterans Affairs for planning, designing, constructing, or leasing of shared medical facilities with the goal of improving the access to, and quality and cost effectiveness of, the health care provided by the Departments to their respective beneficiaries.

Subsection (a) also would provide authority to the Departments to both transfer and accept funds appropriated for planning and design, minor construction projects, and leasing of shared medical facilities. Specifically, both Departments desire authority to use minor construction dollars within their respective thresholds to fund worthy collaborative projects, without having the aggregation of these funds convert a minor project into a major one. This legislative proposal would provide authority to both Departments to transfer and accept funds appropriated for minor projects. Each Department's contribution for minor construction is limited to its respective dollar threshold and contributions from the other Department are not counted towards the receiving Department's minor construction threshold. The result is that a minor construction project may be carried out using funds combined by both Departments, to an approved cost not to exceed $12 million, as long as neither Department exceeds their respective minor construction authority.

While the Economy Act clearly includes purchasing and contracting, including services for renting and leasing, within the authorized support services, the Departments do not currently have sufficient statutory authority under the Economy Act, or elsewhere, to permit the transfer and receipt of funds between Departments to lease a shared medical facility (one than exceeds

the needs of either Department individually but would meet the combined requirements). Consequently, this legislative proposal also would permit the Departments to transfer funds in furtherance of a combined/joint lease for shared medical facilities.

Subsection (b) of this proposal would amend 10 U.S.C. 2801 by revising the definition of "military construction project" to include projects involving shared medical facilities under this new authority. The definition has been expanded to facilities not just located on a military installation and under the jurisdiction of the Secretary of Defense, but also to shared medical facilities as otherwise authorized by law. The VA has proposed similar legislation amending the term "medical facility" at 38 U.S.C. 8101(3).

Changes to Existing Law:

1. **Section 2814** would add a new section 1104a to chapter 55 of title 10, United States Code, as set forth in the legislative text above.

2. **Section 2814** would also amend section 2801 of title 10 as follows:

§ 2801. Scope of chapter; definitions

(a) The term "military construction" as used in this chapter or any other provision of law includes any construction, development, conversion, or extension of any kind carried out with respect to a military installation, or property under the control of the Secretary of Veterans Affairs for shared medical facilities, whether to satisfy temporary or permanent requirements, or any acquisition of land or construction of a defense access road (as described in section 210 of title 23).

(b) A military construction project includes all military construction work, or any contribution authorized by this chapter, necessary to produce a complete and usable facility or a complete and usable improvement to an existing facility, including a shared medical facility with the Department of Veterans Affairs pursuant to section 1104a of this title and section 8111B of title 38 (or to produce such portion of a complete and usable facility or improvement as is specifically authorized by law).

Section 2815 would modify the reporting period covered by the annual Guam realignment report from calendar year to fiscal year. The proposal would save significant labor for all entities required to submit data for inclusion in the report, and would result in more accurate and verified data. Some of the entities affected include, the Departments of Commerce, Defense, Labor, and Transportation, and the Environmental Protection Agency. Department of Defense reporting components include, the Departments of the Army, Navy, and Air Force, the United States Marine Corps, the Defense Finance and Accounting Service, and the Department of Defense (DoD) Comptroller.

The present legislation requires calendar year reporting no later than February 1 of the following year. Federal Agencies (including DoD components) however, operate on the fiscal year reporting cycle ending on September 30. The difference in the reporting cycles results in late submissions from agencies responding to the data call requests because they must first reconcile the data from parts of two fiscal years (for example, calendar year 2012 data will include 9 months of fiscal year 2012 data and 3 months of fiscal year 2013 data). For the February 1, 2012 report, some data inputs were received by the Office of the Inspector General (OIG) as late as January 26. The late responses severely limit the ability of OIG personnel to compile, organize, and verify the data before the February 1 due date for the report. Additionally, in-depth analyses that could be used to support the forensic audit, required by section 2835(h)(2)(1)(B), at the 90 percent completion point of the realignment cannot be performed within these time constraints.

The majority of information relating to the funds which must be included in the report pertains to military construction (MILCON), five year funds. The requirement to report the expenditures in calendar year increments results in ten collection efforts from the agencies instead of the five it would take if reporting by fiscal year. Additionally, since all agencies must reconcile expenditures annually at the end of their fiscal year, they could reduce their administrative burden by extracting the required data from their existing annual reconciliations instead of conducting additional reconciliations. Other funds (not MILCON) reported by DoD and the ICG personnel are fiscal year appropriations. The calendar year format precludes the ability to quickly identify issues with expenditures because the calendar year covers two separate fiscal years.

Due to changes to the international agreement with the Government of Japan and Congressional interest, the timeline for completion for the Guam realignment has slipped from 2014 to as late as 2023. This will result in a corresponding reporting requirement for the OIG extending out to 2023 as well, and will compound the complexity of the required forensic audit. Additionally, the National Defense Authorization Act of 2012 (NDAA 2012) prohibited any expenditures on the Guam Realignment until certain planning conditions were met. The prohibitions were also included in the House and Senate Armed Services Committees inputs into the NDAA 2013, with the exemption of ongoing MILCON projects. This strategic pause in funding creates a window of opportunity for the OIG to easily switch from calendar year to fiscal year reporting.

Changes to Existing Law: Section 2815 would make the following change to section 2835 of the National Defense Authorization Act for Fiscal Year 2010:

SEC. 2835. INTERAGENCY COORDINATION GROUP OF INSPECTORS GENERAL FOR GUAM REALIGNMENT.

(a) * * *

* * * * *

(e) REPORTS.—

(1) ANNUAL REPORTS.—Not later than February 1 of each year, the chairperson of the Interagency Coordination Group shall submit to the congressional defense committees, the Secretary of Defense, and the Secretary of the Interior a report summarizing, for the preceding ~~calendar~~ fiscal year, the activities of the Interagency Coordination Group during such year and the activities under programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam. Each report shall include, for the year covered by the report, a detailed statement of all obligations, expenditures, and revenues associated with such construction, including the following:

(A) * * *

Subtitle C—Land Withdrawals

Section 2821 would renew withdrawals for Naval Air Weapons Station China Lake and Chocolate Mountain Aerial Gunnery Range, California, convert an existing right-of-way to a withdrawal for Limestone Hills Training Area, Montana, and create a new withdrawal adjacent to and part of Marine Corps Air Ground Combat Center Twentynine Palms, California. This proposal would also place the withdrawals in title 10, United States Code, as opposed to the prior practice of leaving them as stand-alone provisions of national defense authorization acts.

Subsection (a) of this proposal is organized as a new chapter in title 10, chapter 174, at the end of subtitle A. It is further organized into subchapters. The first subchapter contains general provisions that are common to all the withdrawals under the chapter and consists of sections 2931 through 2948. The provisions are, for the most part, taken from prior withdrawals, although they have been updated in language. The subsequent subchapters are each dedicated to individual withdrawals, China Lake being subchapter II—section 2955a-c, Limestone Hills being subchapter III—section 2957a-e, Chocolate Mountain being subchapter IV—section 2959a-d, and Twentynine Palms being subchapter V—section 2961a-c. The chapter can have additional withdrawals added in the future should the proponents wish to take advantage of it. The specific sections of the new chapter are described below.

Section 2931 applies the provisions of subchapter I to the withdrawals in the subsequent subchapters. It also provides rules of construction and common definitions. The rule of construction that allows the use of other authorities of title 10 by providing a cross reference to provisions applicable to lands under the jurisdiction, custody, or control of a Secretary concerned is not intended to, nor does it, expand the existing authorities of the DoD. It only ensures that the Secretary concerned is able to exercise existing authorities on withdrawn lands under that Secretary's management responsibility even though the Secretary does not exercise jurisdiction, custody, or control in the same sense as is exercised over non-withdrawn DoD lands.

Section 2932 provides for the production of maps and legal descriptions for the withdrawals; this is a standard provision of withdrawals.

Section 2933 provides for the institution of access restrictions to the withdrawn lands by the Secretary concerned when the need arises; this is a standard provision of withdrawals. Such restrictions are temporary in nature.

Section 2934 provides a process for changes in use for other defense-related uses besides those specifically provided for under each withdrawal; this is a standard provision of withdrawals.

Section 2935 addresses non-Defense-related authorizations, such as leases, easements, permits, and licenses, by the Secretary of the Interior or the Secretary concerned. Authorizations by the Secretary concerned may not exceed the term of the withdrawal. This provision would apply, e.g., to authorization by the Secretary of the Interior of use by a local government of mineral materials disposable under the mineral materials disposal laws. This section also provides protection of Federal oil and gas interests from the possibility of drainage.

Section 2936 provides that the Secretary concerned will provide for brush and fire suppression from defense activities on the withdrawn lands; this is a standard provision of withdrawals.

Section 2937 provides for on-going decontamination; this is a standard provision of withdrawals.

Section 2938 provides that the withdrawal does not create any new water rights; this is a standard provision of withdrawals.

Section 2939 addresses hunting, fishing, and trapping; this is a standard provision of withdrawals.

Section 2940 provides limitations on extensions and renewals; this is a standard provision of withdrawals.

Section 2941 addresses an application for renewal of a withdrawal and reservation; this is a standard provision of withdrawals.

Section 2942 provides a limitation on subsequent availability of lands for appropriation; this is a standard provision of withdrawals.

Section 2943 addresses relinquishment; this is a standard provision of withdrawals.

Section 2944 provides for interchanges and transfers of Federal lands between Interior and Defense at a particular installation. This provision is designed to allow the two departments to, if beneficial, adjust the boundaries and to make more efficient use of the withdrawn lands and the installation's lands. The use of transfer authority is limited to recognize congressional policy on public lands provided in the Engle Act.

Section 2945 provides for delegability; this is a standard provision of withdrawals.

Section 2946 provides for the immunity of United States; this is a standard provision of withdrawals.

Section 2955a provides for the China Lake withdrawal and reservation.

Section 2955b provides for management of China Lake withdrawn lands. The management structure currently in place will continue.

Section 2955c provides a termination date for the withdrawal and reservation. The date is approximately 25 years after expected date of enactment. This firm date makes it easier to manage and plan for renewals than having a relatively random date established by date of enactment.

Section 2957a provides for the Limestone Hills withdrawal and reservation.

Section 2957b provides for management of Limestone Hills withdrawn lands. This provision directly assigns management for Limestone Hills to the Army.

Section 2957c provides a termination date for the withdrawal and reservation. The date is approximately 25 years after expected date of enactment. This firm date makes it easier to manage and plan for renewals than having a relatively random date established by date of enactment. This section also provides for the possibility of the Secretary of the Interior granting an administrative renewal not to exceed 20 years instead of a statutory renewal.

Section 2957d provides special rules governing minerals management because of pre-existing authorized mining activities at Limestone Hills. This section includes a provision that exempts certain actions relating to the existing Indian Creek Mine plan of operations from the ability of the Secretary of the Army to object to such use under section 6 of the Engle Act. In place of this, the parties will enter into an implementing agreement that will address how they will ensure the continuing mining activity occurs consistently with the defense-related use by the Army of Limestone Hills.

Section 2957e provides special rules governing grazing because of pre-existing grazing at Limestone Hills. The Secretary of the Interior would continue to manage grazing unless the Secretary assigns that function to the Army. The Army training safety standards include standards issued at various levels of the Army, including standards issued by the Limestone Hills Range managers.

Section 2959a provides for the Chocolate Mountain withdrawal and reservation.

Section 2959b provides for management of Chocolate Mountain withdrawn lands. The management of the Chocolate Mountain withdrawn lands would be with the Secretary of the Interior unless the Secretary and the Secretary of the Navy agree to assign the management to the Navy.

Section 2959c provides a termination date for the withdrawal and reservation. The date is approximately 25 years after expected date of enactment. This firm date makes it easier to manage and plan for renewals than having a relatively random date established by date of enactment.

Section 2959d provides that Chocolate Mountain, other than the Bradshaw Train, is closed to the public at all time in recognition of the long-standing practice, based on the danger of the training conducted there.

Section 2961a provides for the Twentynine Palms withdrawal and reservation. The Twentynine Palms withdrawal is divided into two areas: the Exclusive Military Use Area and the Shared Use Area.

Section 2961b provides for management of Twentynine Palms withdrawn lands. It also provides for joint use of portions of the lands during certain times of the year. The Exclusive Military Use Area would be managed by the Navy. The Shared Use Area would be managed by either the Secretaries of the Interior or the Navy, depending on which was using the lands at the time. The Secretary of the Navy is allowed to use the lands exclusively for two months each year. In addition, two areas in the Shared Use Area, each 300 meters square, are reserved at all time for the Secretary of the Navy. The section also designates additional Bureau of Land Management (BLM) acreage as the Johnson Valley Off-Highway Vehicle Recreation Area.

Section 2961c provides a termination date for the withdrawal and reservation. The date is approximately 25 years after expected date of enactment. This firm date makes it easier to manage and plan for renewals than having a relatively random date established by date of enactment.

Subsection (b) authorizes a one-time payment of $1,000,000 to Broadwater County, Montana, as payment in lieu of taxes.

Subsection (c) terminates the prior withdrawal for China Lake and Chocolate Mountain.

Subsection (d) provides a clerical amendment to title 10 tables.

Subchapter II, relating to China Lake, would withdraw and reserve lands currently withdrawn and reserved at the Naval Air Weapons Station China Lake. There will be no substantial change in use or in management under this renewal.

Subchapter III, relating to Limestone Hills, would withdraw and reserve the lands which comprise the Limestone Hills Training Area. Such a withdrawal and reservation would enable the continued use of approximately 18,644 acres of federal land for training by the Montana National Guard (MTNG) and other active and reserve components of the armed forces. The MTNG has used the area since the 1950s by a series of special and temporary permits with the BLM. Based on changes in BLM regulations, permits can no longer be granted for this sort of activity, and in order for Army to continue using the property the land must be withdrawn from the public domain. Limestone Hills is operated by the MTNG and is used extensively by both active and reserve components of the U.S. armed forces. It is also available for training the active components of all branches of the military and is made available in some cases for use by other federal, state, and local agencies. This area provides a realistic training environment for over 13,000 personnel annually, and recently as many as 63,000 personnel annually. Unless this legislative proposal is passed, the Army authority to use the Limestone Hills will end in March 2014.

Subchapter IV, relating to Chocolate Mountain, would withdraw and reserve lands currently withdrawn and reserved at the Chocolate Mountain Aerial Gunnery Range. There will be no substantial change in use under this renewal. BLM currently manages the withdrawn lands; this assignment responsibility may be assigned to the Marine Corps in order to facilitate more comprehensive and organized management of both withdrawn and Navy lands at Chocolate Mountain.

Subchapter V, relating to Twentynine Palms, would withdraw and reserve lands adjacent to the Marine Corps Air Ground Combat Center Twentynine Palms. To meet current and future strategic needs, the Marine Corps has identified the Marine Expeditionary Brigade (MEB) as the premier response force for smaller-scale contingencies. Adequate pre-deployment preparation for a MEB-sized Marine Air Ground Task Force (MAGTF) requires sustained, combined arms, live-fire, and maneuver field training. There are no existing training bases, facilities, ranges, or live-fire ground and air maneuver areas that could adequately support MEB-sized MAGTF training requirements. Expansion of the Marine Air Ground Combat Center at Twentynine Palms has been identified as the only viable option to meet this vital training requirement.

Budget Implications:

CHINA LAKE:

RESOURCE REQUIREMENTS ($MILLIONS)									
TOTAL $M (FY2014-FY2018)	**FY 2014 $M**	**FY 2015 $M**	**FY 2016 $M**	**FY 2017 $M**	**FY 2018 $M**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
14.47	2.84	2.85	2.88	2.93	2.97	Operation & Maintenance, Navy	01	BSS1	0208538N
5.34	1.21	0.91	1.10	1.21	0.91	Operation & Maintenance, Navy	01	BSS1	0708053N
1.65	0.33	0.33	0.33	0.33	0.33	Operation & Maintenance, Navy	01	BSS1	0702856N
7.00	1.40	1.40	1.40	1.40	1.40	Operation & Maintenance, Navy	01	BSS1	0901853N
12.50	2.50	2.50	2.50	2.50	2.50	Operation & Maintenance, Navy	01	BSM1	0203176N
1.45	0.29	0.29	0.29	0.29	0.29	Operation & Maintenance, Navy	01	BSS1	0203779N
10.00	2.00	2.00	2.00	2.00	2.00	Operation & Maintenance, Navy	01	BSM1	0202578N

LIMESTONE HILLS:

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation From**	**Budget Activity**	**Program Element**	**Dash-1 Line Item**
Army	0	0	0.97	0	0	Operation and Maintenance, Army National Guard	1	0522151A	121
Total	0	0	0.97	0	0				

CHOCOLATE MOUNTAIN:

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Total	0	0	0	0	0	Operation & Maintenance, Marine Corps	N/A	N/A	N/A

TWENTYNINE PALMS:

	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	Appropriation To	Budget Activity	Dash-1 Line Item
Total	9.57	8.81	8.09	9.63	9.57	Operation & Maintenance, Marine Corps	BSS1/BSM1	TBD

(1)

Changes to Existing Law: Section 2821 is a new provision of law.

TITLE XXIX—DEFENSE BASE CLOSURE AND REALIGNMENT

Sections 2901-2912 would authorize one new round of base closures and realignments, in 2015, 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.

The Department needs to close and realign bases to meet strategic and fiscal imperatives.

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 United States is at a strategic turning point after a decade of war. With changes in strategy, come changes in force structure. We are shaping a joint force for the future that will be smaller and leaner, while also agile, flexible, ready, and technologically advanced. Absent a closure process, the Department is locked in a status quo configuration that does not match evolving force structure, doctrine, technology, and other changes.

It is axiomatic. Force structure reductions produce excess capacity; excess capacity is a drain on resources. Furthermore, retaining and sustaining bases that are excess to strategic and mission requirements is wasteful and will drive undesirable reductions in forces, training, and modernization. As Secretary Panetta stated in his press conference on January 26th, "[i]n this budget environment, we simply cannot – simply cannot sustain the infrastructure that is beyond our needs or ability to maintain it".

Savings from base realignment and closure (BRAC) rounds are real and substantial. The first four rounds of BRAC collectively are producing $8 billion in annual recurring savings. BRAC 2005, which focused on reshaping installations to better support forces – as opposed to saving money – is now generating $4 billion in annual recurring savings. 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).

Through a global examination of base infrastructure the Department will: eliminate excess infrastructure that is a drain on resources; configure its infrastructure so it is best positioned to meet strategic and mission requirements; and redirect freed-up resources to higher priorities

The Secretary has made it clear that we are at a strategic turning point.

The Department is already looking aggressively at overseas footprint reductions, but overseas infrastructure cuts are not sufficient to make the needed reduction in our infrastructure overhead burden – we must also look at domestic infrastructure reductions. Furthermore, examining overseas infrastructure without undertaking the same effort with respect to our domestic infrastructure would limit the comprehensiveness and creativity of the effort.

One need only look back at recent history to recall similar strategic crossroads: the end of the cold war in the late 1980s and the catastrophic events of September 11, 2001. At both those points in history, the Department and Congress 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.

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: Sections 2901-2912 would make changes to existing law as follows:

TITLE 5, UNITED STATES CODE

§ 6304. Annual leave; accumulation

(a)***

* * * * * * *

(d)(1)***

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(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).

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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 2013.

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

(a)***

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(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 2013.

TITLE 49, UNITED STATES CODE

§ 47151. Authority to transfer an interest in surplus property

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(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 2013.

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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 2013.

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